STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission, On Its Own Motion,	)	
vs.	)	Docket No. 00-0700
Illinois Bell Telephone Company	)	
Investigation into tariff providing unbundled local switching with shared transport	)	

AMERITECH ILLINOIS' INITIAL BRIEF

***** PUBLIC VERSION *****

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Illinois Bell Telephone Company ("Ameritech Illinois" or "Ameritech") respectfully submits its initial post-hearing brief in this docket. As discussed herein, the Commission should approve Ameritech Illinois' tariff for unbundled local switching with shared transport ("ULS-ST" or "shared transport") and decline the changes proposed by Staff and the various competitive local exchange carriers ("CLECs").

EXECUTIVE SUMMARY

The Commission's Order in the SBC/Ameritech merger docket (No. 98-0555) required Ameritech Illinois to provide a "long term" version of unbundled local switching with shared transport within one year of the merger's closing, which occurred on October 8, 1999. On August 24, 2000, Ameritech Illinois filed a tariff for a long-term version of ULS-ST, which replaced the interim version of shared transport that had been offered since the Commission's merger order. Among other things, the long-term version of shared transport allows CLECs to bill for originating and terminating access provided to CLEC customers served through shared transport or the unbundled network elements platform ("UNE-P"). Staff recommended that the tariff be investigated but not suspended. The Commission therefore allowed the tariff to go into effect on October 8, 2000, with amendments becoming effective on October 9, 2000.

In the Initiating Order issued on November 1, 2000, the Commission commenced an investigation of the tariff under Section 9-250 of the Illinois Public Utilities Act (220 ILCS 5/9-250). That Initiating Order lists three issues for investigation:

A) Whether the costs and rates [for ULS-ST] comply with prior Commission and FCC Orders;

B) Whether Ameritech's restriction of the shared transport offering to local exchange traffic is appropriate and should be maintained, specifically, whether shared transport should be available for use by CLECs in transporting their intraLATA toll traffic; and

C) Whether Ameritech's restriction on ordering new and additional (i.e. second line) loops in combination with unbundled switching and shared transport is appropriate and should be maintained.

Initiating Order at 3. The following summarizes Ameritech Illinois' position on the three issues actually under investigation and explains why no changes to Ameritech Illinois' currently effective tariff are needed.

1. Ameritech Illinois' costs and rates for ULS and ULS-ST comply with all applicable law. The issue attracting the most attention in this case was whether Ameritech Illinois' costs and rates for ULS and ULS-ST comply with applicable law. The evidence proves that they do. The rate issues fall into three categories: (i) the rate for the ULS part of ULS-ST; (ii) the rates for the shared transport part of ULS-ST; and (iii) the rate for AIN custom routing of operator services ("OS") or directory assistance ("DA") when used with ULS-ST. Staff also inserted the issue of joint and common costs.

a. Unbundled Local Switching. There are two principal issues that separate the CLECs, Staff, and Ameritech Illinois with respect to the costs – and rates – for the ULS portion of ULS-ST:

The first issue is whether ULS costs should be recovered through a single flat rated port charge (which the CLECs advocate) or through a two-part rate structure: a flat rate for the line port and a minutes of use ("MOU") charge for usage (which Ameritech Illinois proposes).

The second issue is the weighting between replacement and growth lines that should be used in coming up with the weighted average cost of local switching. The CLECs (and, to a lesser extent, Staff) want a weighting heavily, and improperly, biased in favor of replacement lines – which are much less expensive than growth lines. (Replacement lines are provided in new digital switches that replace analog switches; growth lines are added to existing switches.) This yields an artificially low weighted average cost per line. Ameritech Illinois, on the other

hand, advocates a weighting that follows strictly the split between replacement lines and growth lines actually specified in its contracts with its switch vendors – which yields a weighted average that represents what Ameritech Illinois actually pays for switching.

Usage Costs. With respect to this issue, it is undisputed that the switch imposes two kinds of investment costs: one for the line port and one for the equipment necessary to transmit the signal or message to and from the line port. A line port is dedicated to a specific user; it is appropriate, therefore, to recover its cost through a flat rate charge. The switch equipment, however, is not dedicated to any one user. It is shared by all users – but not necessarily equally. Some use it very little; others use it extensively. The question in this proceeding is how the underlying investment cost for that equipment should be recovered.

The CLECs say that it need not be recovered at all – that it is sufficient to charge a single flat rated per port charge irrespective of how much (or how little) the switch's capacity is used. Ameritech Illinois, on the other hand, proposes that this investment be recovered through a small MOU usage charge. Usage consumes resources – *i.e.*, the switch's capacity to carry traffic. The greater the usage, the greater the resources consumed, and the greater the investment cost caused by the usage. Ameritech Illinois' proposal is the only way to ensure that each user pays for the costs it causes. If the CLEC proposal – *i.e.*, basically usage for free – were accepted, the CLECs purchasing ULS or ULS-ST could market to high usage customers only, and force Ameritech Illinois to subsidize them. This is because Ameritech does not have the luxury of targeting only high usage customers; it must serve *all* customers.

In fact, that is precisely the CLECs' strategy. As the FCC's data makes clear, CLECs have targeted primarily large and medium-sized businesses. Indeed, 60% of their customers fall in this category, while only 20% of the ILECs' customers do. *See* Attached FCC Report. These business customers obviously make much greater use of the shared switching equipment than the

average Ameritech Illinois customer. Accordingly, if the CLECs' proposal were adopted, the Ameritech Illinois (non-ULS) ports would subsidize the CLEC (ULS) ports. Moreover, not only are the CLECs' customers, on average, high-usage users, but their use also is concentrated during peak times (*i.e.*, business hours). And if usage is basically free, which it would be under the CLECs' proposal, it is reasonable to expect peak usage will be greater than it would otherwise be. It is well accepted that when a resource is free, it tends to be overused. Greater-than-expected peak usage will cause greater future usage investment costs – which, again, under the CLECs' proposal would be borne by Ameritech Illinois alone, and not the true cost causers (the CLECs and their high-usage customers).

By and large, Staff agrees with Ameritech Illinois that the CLECs' customers use the switch more at peak times than do Ameritech Illinois' customers, and that the CLECs thereby cause disproportionately more of the usage-related investment costs of the switch. Yet Staff does not recommend adoption of Ameritech Illinois' preferred bifurcated ULS rate structure, the only structure proposed that allows Ameritech Illinois to recover those CLEC-driven costs. Staff apparently believes the Commission cannot adopt Ameritech Illinois' proposal because the Commission is bound by its prior decision in Docket No. 96-0486/96-0569, which adopted a purely flat rated charge for ULS. As Ameritech Illinois discusses herein, the Commission is not bound by that decision (which adopted only an *interim* flat rate), and the record developed in *this* proceeding clearly justifies and warrants departure from that interim flat rate and adoption of Ameritech Illinois' preferred bifurcated rate.

The FCC recognized in paragraph 810 of the *First Report and Order* (and confirmed on reconsideration of that order) that incumbents incur usage-based switching costs, and that they should be permitted to charge usage-based rates to recover these costs. Likewise, *every* state (including Illinois) to consider the issue has concluded that usage imposes a cost – and every

state (except Illinois) has adopted a bifurcated rate structure that recognizes this: a flat rate for the port and an MOU rate for usage. Illinois should do likewise. Adherence to well accepted principles of cost causation requires no less.

Weighted average price for switching. Ameritech Illinois has three switch vendors: Nortel, Siemens and Lucent. Ameritech Illinois has two contracts with each: (i) a replacement contract, pursuant to which the switch vendor commits to replace specific 1A analog switches with digital switches in accordance with a defined timetable; and (ii) a Partners in Provisioning ("PIP") contract, pursuant to which the vendor commits to provide growth lines on *its* switches over a specific time period. The basic prices under both contracts are based on a per line charge. The per line price is much lower for replacement lines; in fact, Nortel charges [redacted] for replacement lines – its replacement contract specifies that it will replace the identified 1A analog switches for [redacted] per line.

The reason for this two-tiered pricing scheme is simple. If supplier A provides a switch, only A's equipment can be used to provide growth lines for that switch. Accordingly, the vendors compete for Ameritech Illinois' growth line business by offering bargain basement prices for replacement lines – and, in the case of Nortel, [redacted].

This is not to say that the switch vendors do not have a "single price" per line which they need in order to cover their costs and earn a profit. They clearly do. The vendors' costs are the same irrespective of whether the line is a replacement line or a growth line. So they need prices which in the aggregate will give them sufficient revenue at the end of the day to recover these costs and earn their desired profit. Here is how they accomplish that: they know, with precise certainty, how many replacement lines they are committed to provide; the replacement contracts specify the switches in question, and the vendors know the precise number of lines in each

switch and the timetable for providing the replacement switch. As for the growth lines, the vendors know with reasonable certainty how many growth lines will be needed in each year covered by the PIP contracts. Accordingly, when a vendor agrees to price X for replacement lines, and price Y for growth lines, the vendor knows with reasonable certainty the total revenue it will receive in current dollars over the life of the contracts. And by dividing that total revenue number by the total number of lines, that vendor can readily determine the weighted average "single price" it will receive. If that price is sufficient to recover the vendor's per line costs and earn a profit, fine; if it is not, the vendor will adjust its prices so that the weighted average "single price" *is* sufficient to accomplish that goal.

Ameritech Illinois has developed a model that determines what that "single price" is for all of its switch vendors. That is, it computes the "single price" for each vendor (in the manner discussed above), and then weights these "single prices" based on the percentage of lines that each vendor will provide, to come up with a "single price" for all vendors. That price is then applied to *all* of Ameritech Illinois' switch lines to come up with a per line cost for the entire "fleet." That cost is forward-looking; it is the cost that Ameritech Illinois would incur if it went to its vendors today and asked them to replace the entire switch network – because it is based on the "single price" that the vendors would need on a per line basis to satisfy their revenue requirements.

The CLECs agree with everything that Ameritech Illinois did, with one exception. They theorize that if the vendors are willing to provide in the aggregate the number of replacement lines specified in the replacement contracts, say 2 million lines in all, at the prices specified in those replacement contracts, the vendors would be willing to replace the other more than 14 million existing lines in Ameritech Illinois' network for the same price. Indulging this assumption yields a much lower "single price" and therefore a much lower per line forward-

looking cost, which obviously is the CLECs' desired goal.[1] But the CLECs' premise is patently absurd. The vendors plainly would not provide more than the number of replacement lines specified in the replacement contracts at the "low ball" replacement line prices. If they did, not only would they fail to earn a profit; they would fall far short of even covering their costs. Consider Nortel: Under the CLECs' hypothesis, Nortel, which supplies roughly half of Ameritech's switches region wide, would be willing to provide about 8.5 million lines for [redacted] No discussion is needed to show that that would never happen. Accordingly, Ameritech Illinois' weighting (and the prices and costs it yields) should be adopted, and the CLECs' and Staff's proposal should be rejected.

While Staff criticizes the CLECs' line weighting methodology on many fronts, at the end of the day, Staff essentially commits the same fundamental error: it assumes that the vendors would provide many more replacement lines than the limited number expressly provided for in the vendor contracts, and that the vendors would do so while keeping prices constant. Like the CLECs' proposal, this dramatically understates Ameritech Illinois' forward-looking switching costs, and should be rejected for the same reasons.

b. Rate for shared transport portion of ULS-ST. There are six rate elements for the ST portion of ULS-ST, but the parties' positions boil down to a few disagreements. As a general matter, Staff's proposals differ from Ameritech Illinois' proposals based on Staff's use of a different weighting for growth and replacement trunk ports and a different percentage figure for joint and common costs. The differences between Ameritech

[1] The "difference" between the CLECs and Ameritech Illinois can be summarized as follows: Ameritech Illinois comes up with its "single price" by multiplying the replacement lines specified in the contracts by the replacement price, multiplying the expected number of growth lines by the growth line price specified in the PIP contracts, adding the two, and dividing the sum by the total number of replacement lines and growth lines provided for under the contracts. The CLECs, on the other hand, do the same calculation, except they multiply the replacement line price by the sum of the number of lines specified in the replacement contracts and *all existing lines of switching in the network*.

Illinois and the CLECs generally relate to the different weighting of growth and replacement trunk ports. The CLECs engage in the same improper assumptions about the number of replacement trunk ports that they used to artificially inflate the number of replacement lines for the ULS rate. Ameritech Illinois, on the other hand, uses a trunk port mix that adheres to the mix specified in its switch contracts. The CLECs also oppose paying anything for usage of a switch when they use ULS-ST to originate calls, even though they expect Ameritech Illinois to pay them reciprocal compensation for the exact same switching function when they use ULS-ST to terminate an Ameritech customer's call. Such disparate treatment of the exact same switching function would obviously be illogical and unfair.

c. Rate for custom routing of OS/DA with ULS-ST. Ameritech Illinois and Staff were the only parties to address this issue. The differences between their proposals result from (i) Staff's recommendation that disconnection costs, although inevitable, should be paid at the time of disconnection rather than when the custom routing arrangement is established; (ii) Staff's reduction of Ameritech Illinois' estimated costs to develop AIN custom routing capability; and (iii) Staff's assumption that custom routing would be requested at every single central office in the five state Ameritech region, whereas Ameritech Illinois projected that demand would occur at a significant number, but not all, of central offices. Staff's adjustments are not realistic and rest on certain unsupported assumptions. The Commission should therefore reject them.

d. Joint and common costs. Staff has inserted the issue of joint and common costs into this case, even though neither Ameritech Illinois nor the CLECs originally addressed it. Ameritech Illinois' proposed rates use the joint and common cost markup previously approved by the Commission, but Staff now seeks to reduce that markup by about one-third. As an initial matter, this proposal is improper because the joint and common cost markup is a factor that applies to all UNEs (not just ULS and ULS-ST), and should be addressed only in proceeding with a fully developed record, which is not the case here. In any event, Staff's proposal suffers from three critical problems: (i) it relies on an outdated, *draft* joint and common cost study, not the study Ameritech Illinois formally submitted to the Commission pursuant to the SBC/Ameritech merger order in Docket No. 98-0555, and, to reduce the markup, purports to reflect merger-related savings expected to be realized over multiple years, but does not discount those figures to present value, which obviously has a substantial skewing effect; (ii) it assumes that merger-related savings will be 80% greater than anticipated, though the proceeding to determine actual savings is not completed; and (iii) it fails to account for merger-related capital savings (instead accounting for expense savings only), which, as Staff concedes, has the effect of improperly reducing Staff's joint and common cost figure. Given these flaws and the fact that the general issue of joint and common costs should not be addressed here, the Commission should approve the rates that use Ameritech Illinois' established, previously-approved markup for joint and common costs.

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The following table, taken from Schedule WCP-3S to Mr. Palmer's surrebuttal testimony, summarizes the parties' positions on the various pricing issues: [redacted]

[redacted]

[redacted]

[2] Source: AT&T/WorldCom Joint Ex. P-1.1 (Ankum).

[3] Source: Am. Ill. Ex. 2.1 (Palmer) Sch. WCP-6R.

[4] Source: *Id.*

[5] Source: Staff Ex. 5.0 (Graves) 12.

[6] This number and the number in the next row should actually both be [redacted], as Ameritech Illinois failed to include bill processing costs that would go into this rate. *See* Am. Ill. Ex. 2.2 (Palmer) at 9 n.1.

2. Shared transport should not be required to be made available for use by CLECs to route their intraLATA toll traffic. The CLECs seek to expand the use of shared transport from the transportation and routing of local traffic to also include transportation and routing of their interexchange intraLATA toll traffic. There is no legal or policy support for that request. The FCC has always viewed the unbundling of shared transport and of local switching as a means of promoting competition in *local* services. *UNE Remand Order*, ¶¶ 253, 272-73, 369, 375, 379;[7] *Third Reconsideration Order*, ¶ 35;[8] *First Report and Order*, ¶¶ 410, 439.[9] It has never required that shared transport – or any other UNE, for that matter – also be made available for CLECs to use in providing *non-local, toll* services. Indeed, the FCC has made clear that a requirement to unbundle a network element for use in one market (such as local services) does not automatically mean the element must be unbundled for use in other markets (such as toll services). *Supplemental Order Clarification*, ¶¶ 14-16.[10] This makes perfect sense, as such non-local markets may already be competitive, meaning that extending unbundling requirements to those markets would be unnecessary and perhaps even anticompetitive, as such requirements immediately skew investment incentives and strategies by existing competitors and new entrants in that market. The intraLATA toll market in Illinois is robustly competitive and has been for some time, and thus no unbundling requirements are necessary to open that market to competition.

3. Ameritech Illinois is not required to combine UNEs for CLECs, whether for new or additional lines or otherwise. The legal question of whether the 1996 Act allows

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[7] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98 (rel. Nov. 5, 1999).

[8] *Id.*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking (rel. Aug. 18, 1997) (subsequent history omitted).

[9] *Id.*, First Report and Order (rel. Aug. 8, 1996) (subsequent history omitted).

[10] *Id.*, Supplemental Order Clarification (rel. June 2, 2000).

regulators to require incumbent LECs to combine UNEs for CLECs has been debated for some time. The issue is presently before the United States Supreme Court in cases 00-511 *et al.*, which will be argued and decided this term. The Supreme Court's decision obviously will be the last word on the issue. At present, however, the controlling law is the decision of the Eighth Circuit Court of Appeals, acting as the single court of appeals authorized to review the FCC's unbundling rules. The Eighth Circuit has twice held that the plain language of the 1996 Act *forbids* any requirement that ILECs combine UNEs for CLECs. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758-59 (8th Cir. 2000) ("*IUB III*"), *cert. granted*, 121 S. Ct. 878 (2001); *Iowa Utils. Bd. v. FCC*, 120 F.2d 753, 813 (8th Cir. 1997) ("*IUB I*"), *aff'd in part and rev'd in part on other issues, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*IUB II*"). Although the Eighth Circuit was specifically reviewing FCC rules, its interpretation of the 1996 Act is binding nationwide including on all state commissions. *Verizon North, Inc. v. Strand,* 140 F. Supp. 2d 803 (W.D. Mich. 2000).

The CLECs' claim that state commissions can require ILECs to combine UNEs for CLECs while *IUB III* remains the controlling law ignores the supremacy of federal law altogether. Simply put, if the 1996 Act prohibits the FCC from imposing a requirement (such as requiring ILECs to combine UNEs), it necessarily also prohibits any state commission from imposing the identical requirement. Any other reading of the law would make the 1996 Act a mockery by applying the exact same statutory language differently depending on the state or federal identity of the regulator. It is implausible that Congress would craft language that denies authority to the FCC, yet, even though it makes no distinction between the FCC and state commissions, intend that such language could be interpreted by state commissions to grant themselves all of the powers denied to the FCC. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. 363, 376 (2000) ("It is simply implausible that Congress would have gone to

such lengths to empower the President if it had been willing to compromise his effectiveness by deference to every provision of state statute or local ordinance that might, if enforced, blunt the consequences of discretionary Presidential action.") Likewise, any decision to ignore the Eighth Circuit's holding would violate well established law, which forbids any collateral attacks on the decisions of courts, like the Eighth Circuit, that review FCC decisions under the Hobbs Act (28 U.S.C. 2342(1)). *See, e.g., FCC v. ITT World Comms.*, 466 U.S. 463, 468 (1984).

The CLECs also may argue that state law authorizes a UNE-combining requirement, but they are wrong. Although the CLECs rely heavily on the Commission's *Wholesale Order*, the Commission has held in plain terms that the *Wholesale Order* allowed CLECs to combine UNEs, but did not require ILECs to combine them for CLECs. Furthermore, the provisions in the 1996 Act that reserve some authority for state commissions, as well as provisions of Illinois law, all make clear that the exercise of such authority must be consistent with the 1996 Act itself – which prohibits any UNE-combining requirement. *See, e.g., Geier v. American Honda Motor Co., Inc.*, 120 S. Ct. 1913, 1921, 1927-28 (2000); 220 ILCS 5/13-801(a).

* * *

For these reasons, and as further described herein, the Commission should approve Ameritech Illinois' proposals and reject the contrary proposals of the CLECs and Staff.

I. THE ULS RATE SHOULD CONTAIN A USAGE-SENSITIVE (PER MOU) COMPONENT TO RECOVER CCS CAPACITY (*I.E.*, USAGE-RELATED) INVESTMENT COSTS.

There is no dispute that a switch imposes essentially two kinds of investment costs relevant to establishing an appropriate rate or rates for unbundled local switching ("ULS"): one for the cost of the *line port*, and one for the cost of the *switch "matrix*" – the equipment that transmits the signal from the line port on one side, through the switch, and to the trunk port on the other side (or *vice versa*). Staff Ex. 3.0 (Liu) at 5; Tr. 320-21. All parties agree that it is

appropriate to charge a flat rate for the line port, since it is dedicated to a particular user. However, the switch matrix is not dedicated to any one user; rather, it is a shared facility. *First Report and Order*, ¶ 810. How Ameritech Illinois should recover the investment costs of the shared matrix is one of the primary issues in this proceeding.

Not only is the switch matrix a shared facility, it is also a usage-related investment. The investment cost of the switch matrix is driven by, and tied directly to, how much capacity it has to channel calls from the calling party to the called party at the time of peak switch usage. Am. Ill. Ex. 2.1 (Palmer) at 31-33. This capacity is referred to as the switch's Centi-Call Seconds, or CCS, capacity. For instance, when a switch is fully utilized at the peak time, it might require 50 CCS to handle all of the usage. The switch would therefore be built with a "large" enough matrix to handle 50 CCS of usage, even though during off-peak hours, the usage of the switch might only consume 20-30 CCS of the available 50 CCS. Thus, if it is anticipated that a switch will experience a high amount of peak time usage and therefore require a high CCS capacity, that switch will be built with a "larger" matrix (*i.e.*, it will have more equipment to transmit calls) than a switch where anticipated peak time usage is less. And the more matrix equipment, the higher the cost of the switch.

As will be discussed in detail below, not all users of the switch use the matrix – and the switch's capacity to carry traffic – equally. Some users, such as large and medium-sized businesses, use it much more, particularly at peak time, than others, such as residential customers. Whomever the customer, however, usage of the switch consumes the switch's resources and its capacity to carry traffic. And more usage consumes more resources and compels higher investment costs.

As Staff's Dr. Liu correctly noted, the Commission has already concluded that usage-related costs "are necessarily incurred in any forward-looking unbundled switch system." Staff

Ex. 7.0 (Liu) at 28 (citing Second Interim Order in Docket Nos. 96-0486/96-0569 (Consolidated) at 59).[11] However, the parties disagree sharply as to how the usage-related investment costs for the switch matrix should be recovered. The CLECs contend that usage-related switch investment, as well as the port investment, should all be recovered in a single flat rate per port charge. However, Staff has taken the position that "[i]t is only natural and in accordance with cost causation principles to allocate the costs [of CCS capacity] based on each user's 'fair share.'" Staff Ex. 7.0 (Liu) at 35. Ameritech Illinois agrees. Since the users of the switch do not use it equally, and therefore do not contribute equally to the CCS investment costs of the switch, those customers whose use plays a larger role in how much CCS capacity must be built into (or added to) a switch should pay more. The CLECs' single flat rate proposal ignores this inescapable truth. Under the CLECs' proposal, all customers will pay the same, regardless of how much or how little they use the switch. This means that if the CLEC proposal were adopted, low-usage customers will be subsidizing the switch usage of high-usage customers. That would mean that Ameritech Illinois and its customers would be subsidizing, improperly and unfairly, the CLECs and their customers. As we discuss below, and as undisputed public data demonstrate, CLECs target and serve primarily medium-sized and large businesses – *i.e.*, customers who are high users, and in particular high peak time users, of the switch. Ameritech Illinois, on the other hand, cannot target any particular category of customer and must serve any customer, including in particular relatively low-usage residential customers. Accordingly, on the whole and on the average, CLECs and their customers will use more of the switch's resource and cause more of the CCS capacity-related investment than Ameritech and its customers – hence the

[11] Second Interim Order, *Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic*, Docket Nos. 96-0486/96-0569 (Consolidated) (Ill. Comm. Comm'n. February 17, 1998) ("*Second Interim Order"*).

improper and unfair subsidy that would flow to the CLECs if their flat rate proposal were adopted.

An example posed by Dr. Liu is instructive in this regard. Staff Ex. 7.0 (Liu) at 40-42. Assume a switch with 500 ports and a total of 1,500 CCS of capacity, and that each port costs $1 and that each CCS of capacity costs $1. Even though CCS is not dedicated to any one user, the average per-line CCS capacity is 3 CCS per line (1,500 / 500). Thus, under a purely flat rated rate structure, the flat rate per port would be $4 ($1 for the port, and $3 for the 3 CCS that each port uses on average.) Assume now that a CLEC buys 10 ports on the switch, and that the average CCS requirement of those 10 CLEC ports is 4 CCS per line – a higher usage level than the average per-line capacity of the switch. These 10 ports would consume 40 CCS, thus imposing $50 in costs ((10 ports x $1 per port) + (10 ports x 4 CCS per port x $1 per CCS)). However, Ameritech Illinois would recover only $40 from the CLECs (10 ports x $4 per port). As Dr. Liu concludes, "the [CLEC] would be free-riding on 10 CCS ($10), which means a cross-subsidy of $10 from [Ameritech Illinois] to the [CLEC]." Staff Ex. 7.0 (Liu) at 42.

This is why Ameritech Illinois has proposed a bifurcated ULS rate structure. (Ameritech Illinois is actually proposing two different bifurcated rate structures, but prefers the first over the second, for the reasons that follow.) Under Ameritech Illinois' preferred proposal, which Ameritech Illinois will refer to as "Alternative 1," the ULS rate contains (1) a per-port, flat-rate charge to recover the cost of the line port, and (2) a per-minute of usage ("MOU") charge that recovers usage-related CCS switch investments. The flat rate port price is [redacted], and the usage-based MOU charge is [redacted]. Am. Ill. Ex. 2.2 (Palmer) Schedule WCP-3S.[12] The hallmark of this proposal is that

[12] Thus, Ameritech Illinois is not seeking to maintain the interim $5.01 flat per-port rate approved by the Commission in Docket 96-0486. Moreover, the proposed flat per-port rate of its alternative proposal, "Alternative

it takes the amount of the switch investment that is usage-driven and separates it from the rest of the switch investment, which is tied to the line termination on the port. Am. Ill. Ex. 2.1 (Palmer) at 2. Thus, the flat per-port rate element does not recover any usage costs, and the usage-driven rate element does not recover any costs of the line port. Am. Ill. Ex. 2.1 (Palmer) at 6. It should also be noted that the per MOU usage rate for this proposal is significantly less than that proposed by Ameritech Illinois in Docket 96-0486. As will be discussed at length below, this proposal is the only proposal that is consistent with the principles of cost causation and controlling federal law, and is the only one that allows Ameritech Illinois to fairly recover its costs.

Ameritech Illinois has also proposed an alternative rate structure, referred to as "Alternative 2." Although this rate structure is bifurcated like Alternative 1, essentially all of the ULS-related switch investment is recovered in the flat, per-port rate. That is, the flat per-port rate is designed to recover both the cost of the dedicated line port and the cost of the switch matrix; the usage-driven CCS capacity investment for the switch is not separated out into the per-minute charge. This proposal does still contain a small usage-sensitive rate element, but this charge is designed to recover only the relatively small costs of call measurement and billing inquiry; unlike the usage-sensitive charge in Alternative 1, it does not recover any of the initial cost of the switch. Am. Ill. Ex. 2.1 (Palmer) at 8. Thus, this proposal is much more like the CLECs' flat rate proposal than it is like Ameritech Illinois' Alternative 1. The flat rated port charge under this proposal is [redacted], and the per-MOU charge is only [redacted]. Ameritech Illinois is presenting this proposal largely in response to Dr. Ankum's pure flat rate proposal, which significantly

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2," which recovers the entire CCS or usage-related investment in the flat per-port rate of [redacted], is also much less than the $5.01.

understates port costs, and in response to those Staff members and Intervenors who continue to believe the Commission's 1998 Order in Docket No. 96-0486 requires implementation of a purely flat rated port charge (with the exception only of a minimal usage charge for measurement and billing).[13]

Ameritech Illinois will soon turn to a more detailed explanation of the merits of its Alternative 1, and how adoption of the CLECs' proposal will result in Ameritech Illinois subsidizing the switching costs of the CLECs. But before doing so, it must address the erroneous view taken by the CLECs, as well as Staff, that the Commission cannot consider Ameritech Illinois' Alternative 1 because it has already decided that switch investment, including the CCS or usage-related investment, may only be recovered through a simple flat rated per-port charge.

A. The Commission Is Not Bound by Its Decision in Docket Nos. 96-0486/96-0569 Adopting an *Interim* Pure Flat-Rate Charge for ULS.

It is true that in Docket Nos. 96-0486/96-0569 (Consolidated), the Commission determined that the initial cost of the switch, including the significant CCS or usage-related investment, should be recovered in a single flat rated per-port charge. That determination was made on an incomplete record. And as Ameritech Illinois has demonstrated in this proceeding, and as we demonstrate in this brief, that determination was misguided. It failed to consider the manner in which such a rate structure would clash with the principles of cost causation, to which the Commission is bound to adhere under both federal and state law. It also failed to consider the improper and unfair cross subsidy it would generate.

The Commission is free to alter that determination now, in this proceeding, based on the more detailed evidence and a more thorough examination of the law. It is well settled that the

[13] Mr. Palmer explained that it would be inappropriate to "pick and choose" from Alternative 1 and Alternative 2: specifically, it would be wrong to take the per-port charge from the first proposal and combine it with the small usage-sensitive component from the second proposal. Am. Ill. Ex. 2.1 (Palmer) at 3-4. If that were done, *none* of the significant CCS or usage-related investment costs would be recovered.

Commission is not bound by its prior findings, but is free to revisit and review its own prior determinations where there are good and compelling reasons for doing so. Indeed, the Commission has the "power to freely deal with each situation as it comes before it, regardless of how it may have dealt with a similar or the same situation in a previous proceeding." *Mississippi River Fuel Corporation v. ICC*, 1 Ill.2d 509, 513, 116 N.E.2d 394, 396-97 (Ill. 1953); *see also Abbott Laboratories, Inc. v. ICC*, 289 Ill. App. 3d 705, 715, 682 N.E.2d 340, 349 (1st Dist. 1997); *Peoples Gas, Light and Coke Co. v. ICC*, 175 Ill. App. 3d 39, 51, 529 N.E.2d 671, 679 (1st Dist. 1988).

Good and compelling reasons to address the issue anew certainly exist here. Most important is the fact that Ameritech Illinois incurs usage-based switch costs, and without a usage-sensitive rate component, it will bear a disproportionate share of those costs and will unfairly subsidize the CLECs' switching costs. (This point is noted above and is discussed in more detail in section I.B. below.) But before addressing that issue, it is important to highlight for the Commission the other considerations and legal authority that warrant (indeed, require) adoption of Ameritech Illinois' preferred bifurcated ULS rate structure.

First, the flat rate approved in Docket No. 96-0486/96-0569 was simply an *interim* rate; it was not intended to govern for all time. And the ULS cost study used in that docket is now outdated. It was prepared almost five years ago, and did not reflect the current two-tiered contractual structure under which Ameritech purchases switching equipment. Instead, that study relied on Telcordia's Switching Cost Information System (SCIS) model. The Commission found that the SCIS model did not accurately reflect the current switch replacement and PIP contracts between Ameritech and its switch vendors that went into effect during that earlier proceeding, and that the SCIS model therefore was inadequate for determining forward-looking switching costs. Accordingly, in response to the Commission's findings, Ameritech developed the

ARPSM model. The current ULS-ST study uses the new ARPSM model to identify separate port and usage costs. Ameritech Illinois is entitled to present those costs in this case. Indeed, even Staff agrees that the proposals now advanced by Ameritech Illinois are superior to the interim flat rate adopted in Docket 96-0486/96-0569. Staff Ex. 8.0 (Buckley) at 7.

Second, recovery of usage-based switching costs through a usage-sensitive rate element is entirely consistent with how the FCC has required switching costs to be recovered. In its *First Report and Order*, the FCC expressly recognized that ILECs like Ameritech Illinois incur usage-related switching costs (in addition to costs that are not usage-sensitive) and may recover them via a usage-sensitive rate. *First Report and Order*, ¶ 810. The FCC ruled that it is "reasonable" for ILECs to charge "a combination of a flat rated charge for line ports, which are dedicated to a single new entrant, and either a flat-rate *or per-minute usage charge* for the switching matrix and for trunk ports, which constitute shared facilities." *Id*. (emphasis added). In fact, the FCC mandated in its regulations that "[l]ocal switching costs *shall* be recovered through a combination of a flat-rate charge for line ports and one or more flat rated *or per-minute usage charges* for the switching matrix and for trunk ports." 47 C.F.R. § 51.509(b) (emphasis added). Switching costs are to be recovered in this manner because, as the FCC found, it "best reflects the way costs for unbundled local switching are incurred." *First Report and Order*, ¶ 810.[14] And on reconsideration, the FCC "remain[ed] convinced that [this] pricing methodology and rate structure established in the *First Report and Order* [is] correct and should be implemented by state commissions." Order on Reconsideration, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Reconsideration*, CC Docket No. 96-98 (rel. Sept. 27, 1996), ¶ 2. In fact, the FCC on reconsideration set a default proxy price

[14] 47 C.F.R. § 51.507(a) provides that UNE rates "shall be structured consistently with the manner in which the costs of providing the elements are incurred."

range for usage-based switching costs that states could adopt on an interim basis if they were unable to review or conduct a cost study establishing those costs within the statutory time frame for arbitrating interconnection disputes. *Id.*, ¶ 6.

Thus, the FCC has expressly recognized that ILECs incur usage-sensitive switching costs and it is plainly a matter of federal telecommunications policy that ILECs like Ameritech Illinois be allowed to recover those usage costs by means of usage-sensitive rates. As discussed above, the FCC has mandated this result. This finding controls here. Because the FCC has already addressed the issue of whether ILECs incur and may recover usage-related switching costs through usage-sensitive rates, the FCC "unquestionably" has "taken the regulation of [this issue] away from the States." *IUB II*, 525 U.S. at, 378 n.6. The Commission is therefore obligated to abide by the FCC's determination and "regulat[e] in accordance with federal policy." *Id.*

Third, the current interim ULS rate in Illinois is *the only one in any of the 50 states* that is purely flat rated; *all* other states allow recovery of usage-related investments through a usage-sensitive rate element. The Public Service Commission of West Virginia has recently completed and released a survey of UNE prices in each of the fifty states. *See* Am. Ill. Ex. 2.2 (Palmer) at Sch. WCP-1S, Table 1. A quick review of the columns entitled "Port Rate" and "Switching" of Table 1 of that survey reveals that *every state except Illinois* has adopted a bifurcated rate structure establishing a flat monthly rate for the "port," and a per-MOU (*i.e.*, usage-sensitive) rate for the "switching" function of the switch. While Illinois is not bound by other states' decisions, the uniformity of every other state's approach to ULS pricing starkly demonstrates that the Commission would be more than justified in approving a usage-sensitive component for ULS in this proceeding.

Thus, the Commission should take a fresh look at whether usage-related switch investments should be recovered via a usage-sensitive rate element. The single flat rate

approved in Docket Nos. 96-0486/96-0569 is only an interim rate, and while Dr. Ankum and the CLECs may contend that a usage-sensitive rate element is not necessary to recover usage costs, the FCC and the other 49 state commissions plainly disagree – for good and compelling reasons. For the reasons that follow, adoption of Ameritech Illinois' preferred ULS proposal is the only one that complies with the FCC's directives and is the only one that properly and fairly apportions usage costs to their causers.

B. Ameritech Illinois Will Not Recover Its Switching Costs Unless Its Preferred Bifurcated ULS Rate is Adopted.

Ameritech Illinois' preferred ULS rate proposal requires those customers who use the switch more, and thus contribute more to the switch's cost, to pay more. This is why the CLECs oppose it. It requires the CLECs and their high-use customers to pay for their fair share of switch capacity consumption. In contrast, the CLECs' flat rate proposal requires each user to pay the same; thus, low-use customers – generally Ameritech Illinois' residential customers – will pay more than their fair share and the CLECs and their business customers will pay less than their fair share.

The CLECs' principal customers are and will be high-use customers – medium-sized and large businesses. As the FCC recently recognized in its May 2001 Local Telephone Competition Status Report, 60% of CLEC customers nationwide are medium and large businesses, institutional, and government customers. *See* Attached FCC Report at 1. That number is even higher in Illinois: here, 62% of CLEC customers are medium and large businesses and other institutional customers. *Id.* at Table 8. In contrast, only about 20% of ILEC customers nationwide are medium and large businesses. *Id.* at 1.

The CLECs' high-use business customers make much greater use of the shared switching equipment and use more of the switch's capacity than does the average Ameritech Illinois customer. Moreover, these CLEC business customers will use the switch primarily at

peak times – *i.e.*, business hours. And if usage is free (as it is under the CLECs' proposal), then one can expect peak usage will be greater than it otherwise would be (since free resources tend to be overused). Because peak time usage contributes to the exhaustion of the shared switching matrix and drives the decision of how much capacity to build into a switch to handle that usage (and therefore the switch's ultimate cost), CLEC usage in this manner clearly causes switch investment costs, costs which will be borne by Ameritech Illinois alone under the CLECs' proposal.

1. Ameritech Illinois bears usage-sensitive costs caused by CLECs.

Usage costs imposed by CLECs will be borne by Ameritech Illinois in at least two ways. *First*, consider the case where an existing switch is unable to handle an increase in usage. Vendors do not install switches with sufficient capacity to accommodate all potential usage, and when usage increases beyond the switch's designed capacity, it will be necessary to add equipment to the switch to increase its CCS capacity. Am. Ill. Ex. 2.1 (Palmer) at 31-33. Even though the central processor of a switch may never exhaust its capacity, when the CCS of a switch increases, vendors must install additional equipment (equipment not cited by the CLECs) in order to channel calls from the line to the trunk "side" of the switch. Additional trunk ports, umbilicals, line units, and switching modules must also be added to accommodate usage increases. *Id*. at 31; Am. Ill. Ex. 2.2 (Palmer) at 3-4.

This additional equipment renders the switch more expensive for the vendor to provide than a low-usage switch. Am. Ill. Ex. 2.1 (Palmer) at 31-32.[15]

However, the existing prices set in the PIP contracts are based on the assumption that the switch vendors will only have to provide switches that accommodate a certain amount of usage.

[15] And usage costs do not come into existence only when the line capacity of a switch is exceeded. Additional equipment must sometimes be added to the switch to handle usage increases even when the number of lines used remains constant or even decreases. This is exactly what has happened with the Lucent switch at Ameritech Ohio's Youngstown 78 central office. Am. Ill. Ex. 2.1 (Palmer) at 34.

Am. Ill. Ex. 2.1 (Palmer) at 30. When the vendor has to augment capacity, it will not simply "eat" the costs of providing greater capacity and more robustly equipped switches. Rather, the vendor will raise its prices at its first opportunity (perhaps when the contracts come up for renegotiation) to recoup the costs of the more expensive switches. *Id*. Because Ameritech will be forced to buy the increasingly more expensive switches that can handle the increase in usage, its costs will naturally increase.

And it is clearly and indisputably usage that causes this cost increase. Indeed, even Dr. Ankum recognized this fundamental point of switch economics in the Ohio UNE (00-1368-TP-ATA)[16] and Michigan Shared Transport (U-12622)[17] dockets. He explained that, when usage increases beyond the level assumed in the contracts, a switch vendor will come back to Ameritech and say:

> Well, we have found that your switch usage has really gone up a lot. Instead of charging you, for example, $100 per line, we're going to be charging $120 per line, because now your lines generate so much more usage on average that I need to put in extra facilities, more than I used to put in.

Am. Ill. Ex. 2.1 (Palmer) at 32. Thus, there is no dispute that, because additional equipment must be installed to accommodate usage, increases in usage increase the cost of switching. And there also is no dispute that these costs will be passed on directly to Ameritech through a higher per-line price.

As the FCC has recognized, Ameritech must be allowed to recover these usage-driven costs from the CLECs. One may wonder why Ameritech just doesn't charge the CLECs a flat rate based on the anticipated future contract prices. First, at the time of this proceeding, we simply don't know what those future prices will be. Accordingly, we are determining rates

[16] *In the Matter of the Application of Ameritech Ohio for Approval of a Carrier to Carrier Tariff*, Case No. 00-1368-TP-ATA (Ohio Public Utilities Commission).

[17] *In the Matter of the Application of Ameritech Michigan for Approval of a Shared Transport Cost Study and Resolution of Disputed Issues Related to Shared Transport*, Case No. U-12622 (Michigan Public Service Commission).

based on current contract prices. Those rates by definition cannot account for future usage-driven cost increases. And if the CLECs have their way, high-usage customers will cause those cost increases but won't contribute a dime to their recovery. The flat rate coming out of this proceeding will be based on current contract prices, not higher future prices; and the usage that will cause these future cost increases will be free.

Even if the Commission were able to adjust the flat ULS rate the moment the increased costs were paid out under the future contracts (which of course would never happen in the real world – there would always be some significant lag during which Ameritech would be left holding the bag), that still wouldn't cure the problem. The new flat rate would force all users to pay the same – even though only some users (*i.e.*, primarily the CLECs and their high-use customers) caused the increased cost.

Second, even where Ameritech Illinois correctly anticipates the required CCS capacity and chooses therefore to buy a "large" switch with enough capacity to handle the anticipated usage level, it would still be unfair to pass on the costs of that switch to all customers equally through a flat rate. Just as in the preceding scenario, it is the CLECs' high-use customers that disproportionately force Ameritech Illinois to incur these additional switching costs – because if it did not have to provide switching for those customers, it could buy a smaller, and less expensive, switch.

Consider, for example, that the way in which switch usage drives switch cost is similar to the way tire usage drives the cost of tires. An Ameritech Illinois employee who drives a short route to and from work everyday along a well-paved street can afford to buy a relatively cheap set of tires because the usage on the tires will be minimal. There will be little wear and tear on the tires since the distance traveled is not long, and the street is well-paved. But what happens when the Ameritech Illinois employee is forced to rent his car to a CLEC employee who wants

to increase the car's usage? Say the CLEC employee wants to regularly drive the car to his cabin in Michigan along a backwoods route. The current set of tires designed for short trips on the well-paved street will not be able to handle this increase in usage. Thus, the Ameritech Illinois employee will have to buy a new set of stronger tires that can handle the longer, rougher journey. The tire maker will make a stronger tire, using thicker rubber and stronger sidewall stabilizers. These improvements will increase the price of the tires. When the Ameritech Illinois employee goes to buy the new tires, the bill of sale will not identify any usage-based costs associated with the tire; it will just list a flat price per tire. But it is clear that the increase in usage on the employee's car is what causes the employee to buy the new tires and what causes the improvements to be made to the new tires, improvements that increase the tire price. Thus, the increased tire costs clearly were caused by the increase in usage. If the Ameritech employee could not include in the lease price a usage-sensitive element, however, that employee will have to pay a pro rata share of the increased cost – a cost he/she clearly did not cause.

It is precisely in this fashion that Ameritech Illinois bears the costs of increased switch usage. Because CLEC customers generate more usage, and more peak time usage in particular, than the average customer, CLEC customers contribute more to these costs than does the average customer. Dr. Liu explained that in this kind of scenario, "[c]ost causation principles would require that cost allocation of CCS investment be based on each port/user's 'contribution' to the total CCS requirement of the switch." Staff Ex. 7.0 (Liu) at 34. However, the CLECs' flat rate proposal forces Ameritech Illinois (and its customers) to subsidize the CLECs (and their customers) because it "assigns an equal share of the CCS investment costs to every port/user," regardless of how much they actually use, and therefore contribute to the CCS investment costs of, the switch. Staff Ex. 7.0 (Liu) at 29-30. As Dr. Liu explained, flat rate pricing schemes are appropriate and cross subsidy problems are eliminated only if the usage patterns for all ports are

statistically identical. Staff Ex. 7.0 (Liu) at 29-30; Am. Ill. Ex. 2.2 (Palmer) at 38. But usage patterns are not statistically identical. It should be intuitively obvious that the usage characteristics of customers who use ports are not statistically identical, and that the business customers courted by the CLECs use switching capacity much more than an average residence. Staff itself recognizes this lack of statistical identity. Ms. Buckley acknowledges as a commonly known fact that "most existing CLECs target large users." Proprietary Staff Ex. 8.0 (Buckley) at 7. In addition, Staff further recognizes that the peak time usage of a business customer is greater than (*i.e.*, not statistically identical to) the peak time usage of a "typical residential customer." Tr. 428 (Liu). And Staff itself concedes that where there is this lack of statistical identity, a flat rate per-port charge is inconsistent with principles of cost causation – and therefore unlawful. See Proprietary Staff Ex. 7.0 (Liu) at 37; Tr. 424-29 (Liu).

The subsidy problem is also evidenced by Ms. Buckley's break-even analysis of Ameritech Illinois' Alternative 1 and Alternative 2.[18] Proprietary Staff Ex. 8.0 (Buckley) at 6. The break-even point is the point at which it makes no difference to a customer which alternative is used – it is the number of MOU per month that will yield the same cost to an end user under either alternative. *Id.* The break-even point for these two proposals is 1,517.42 MOU per month. Am. Ill. Ex. 2.2 (Palmer) at 47. As Ms. Buckley explained, this means that for a customer using more than 1,517.42 MOU per month, Alternative 2 is less costly, and Alternative 1 is more costly. Proprietary Staff. Ex. 8.0 (Buckley) at 6. "[M]ost existing CLECs target large users, those that will have greater usage than [the break-even point]." These larger users

[18] Ameritech Illinois notes that Ms. Buckley's break-even analysis is inconsistent with Illinois Cost of Service Rule § 791.40(c)(3), which requires that volume-sensitive costs shall be directly attributed to the service that causes the costs. The break-even analysis completely ignores the principle of cost causation. It evaluates the alternatives only in terms of which option is more economical, or cheaper, for the purchaser, without any regard to the relative costs that purchaser causes. Ms. Buckley's analysis is also computationally incorrect. Mr. Palmer provided a corrected analysis. *See* Am. Ill. Ex. 2.2 (Palmer) Sch. WCP-2S.

therefore will view Alternative 2 as a "more promising and more economical alternative." *Id*. at 7.

However, all other customers – the vast bulk of Ameritech Illinois' customers (*see infra*) – will be disfavored by Alternative 2. It will force them to subsidize the CLECs' "large use" customers. Under Ms. Buckley's logic, all customers with less than 1,517.42 MOU per month would be paying too much for ULS. And, as shown by CLEC witness Mr. Gillan, this pool of customers is large. As explained by Mr. Gillan, the average use on an Ameritech Illinois line is 822 MOU per month. AT&T/PACE Coalition/Z-Tel Joint Ex. 2.0 (Gillan) at 28. Thus, according to Mr. Gillan, the 1,517.42 MOU break-even point is nearly twice the average line usage. This means that Alternative 2 only benefits the very highest usage customers and forces the vast majority of lines to pay more costs than they cause to be incurred. Am. Ill. Ex. 2.2 (Palmer) at 47. That, in a nutshell, is why the CLECs want a simple flat rated port charge and no usage-sensitive rate element.

2. Usage-driven costs are implicit in the vendors' per-line prices.

The CLECs' primary argument against a usage-sensitive ULS rate element is that Ameritech Illinois does not incur usage-related switching costs because the contracts with its vendors do not contain any usage-based charges; rather, they contain only flat prices per line. This argument is specious. Usage is a function of the switch that consumes resources and causes costs, even though those costs are not explicitly priced by the vendors in the switch contracts. The per-line pricing structure in the contracts is simply the way Ameritech *pays* for switching; it says nothing about whether Ameritech *incurs* usage-based switching costs. Implicit in that per-line price is the assumption that the vendor will make a switch that provides a certain amount of CCS capacity. Am. Ill. Ex. 2.1 (Palmer) at 30. Indeed, even Staff witness Dr. Liu recognizes that CCS investment is implicitly included in the per-line price for switching under the vendor

contracts. Staff Ex. 3.0 (Liu) at 6; Tr. 407 (Liu). Thus, the amount of usage capacity built into a switch influences directly the per-line price. The vendors simply forecast the amount of CCS capacity which they will need to provide, build a matrix sufficient to provide that capacity, and then set per-line prices at a level that will allow them to recover the cost of the dedicated ports as well as costs associated with the shared switch matrix (and the CCS capacity it creates) and the shared trunk ports. Am. Ill. Ex. 2.2 (Palmer) at 15.

It is the job of the cost analyst – through ARPSM – to take the contract prices and identify the pieces of those prices that go with the various network functions, such as usage. Am. Ill. Ex. 2.1 (Palmer) at 37-38. Moreover, the pricing structure adopted by the vendors is simply a device to recover their costs in the short run. Over the long run, more usage requires more physical equipment to be incorporated in the switch, which means more costs for the vendor. Am. Ill. Ex. 2.2 (Palmer) at 14. There is no real debate that the vendor will pass that cost along to Ameritech at the first opportunity. *Id*. Thus, over the long run, the cost of switching equipment will include a substantial usage-related component. *Id*. at 14-15. A forward-looking cost study must account for the additional incremental cost/investment that the increased usage will cause. Am. Ill. Ex. 2.1 (Palmer) at 32.

Finally, it must be noted that, even though the contracts do not contain a usage-based pricing structure, they *do* contain provisions dealing with usage-sensitive charges. For instance, each contract has provisions dealing with charges incurred when Ameritech places orders known as "usage" or "CCS" jobs. Am. Ill. Ex. 2.1 (Palmer) at 31. These are orders for additional equipment that is installed in existing switches to accommodate usage growth, and vendors may charge Ameritech separately for these jobs. *Id*. Mr. Palmer explained that the number of CCS jobs "in the past several years has grown dramatically." Am. Ill. Ex. 2.1 (Palmer) at 34. [redacted]

[redacted]

[redacted] *Id*. at 34-35.[19] In addition, each contract contains service and performance requirements regarding network traffic, and the vendors charge Ameritech for traffic engineering services, services that expand or contract depending on the *amount* of traffic. *Id*. at 37.

For all of these reasons, both the law and the evidence support including a usage-sensitive component in the ULS price. To find otherwise, as the CLECs request, would be to ignore bedrock principles of cost causation and improperly force Ameritech Illinois' customers to subsidize CLEC use of ULS and ULS-ST. No other state in the nation uses a pure flat rate for ULS, and neither should Illinois.

II. AMERITECH ILLINOIS APPROPRIATELY CALCULATED ITS ULS AND ULS-ST RATE INPUTS.

Before computing the TELRICs for ULS, Ameritech Illinois had to determine (among other things) what its forward-looking switch investments and costs were. This was not as easy as simply taking equipment prices from Ameritech's contracts with its switch vendors, however, because Ameritech no longer buys discrete pieces of switching equipment at discrete prices under a single contract with each of its vendors. Rather, Ameritech pays for the equipment based on the number of ports it serves – *i.e.*, it pays a "per-line" or "per-port" rate for each line of switching contained in the switch. Thus, when Ameritech buys a switch that serves 50,000

[19] Dr. Ankum suggests that Ameritech Illinois' decision to hold meetings with its switch vendors to identify CCS charges implies that CCS costs are not significant. This suggestion is naïve. The issues to be addressed in order to identify economic costs for a TELRIC study are not the same issues that engineers face when building and purchasing telecommunications facilities and equipment and, therefore are not the same issues that are most pertinent when negotiating and interpreting vendor contracts. Therefore, separate meetings must be held with switch vendors to clarify and better understand usage-sensitive investments for purposes of assessing underlying TELRIC costs. Am. Ill. Ex. 2.1 (Palmer) at 40.

customers, it pays the vendor a price equal to 50,000 times the per-line price. And Ameritech currently has multiple contracts with each of its three switch vendors, and each vendor charges very different prices depending on *what kind* of lines Ameritech purchases – *i.e.*, whether a line is a "replacement line" (a line in a new digital switch that replaces an old 1-A analog switch) or a "growth line" (a new line added to an existing switch to accommodate growth). As will be discussed below, this two-tiered pricing structure is the product of the competitive nature of the switching industry. In the absence of these competitive forces, each vendor would simply charge a single price for each line of switching it sells to Ameritech.

Ameritech developed the Ameritech Regional PIP Switching Model ("ARPSM") to tackle the two-tiered contractual pricing structure and mutli-variable contracts under which Ameritech Illinois buys switching and determine this single price. ARPSM processes this information and determines the *single*, implicit, forward-looking cost to Ameritech of switching – the single price that the vendor would charge for switching in the absence of the competitive forces that compel the two-tiered structure.

Dr. Ankum and the CLECs do not challenge the basic methodology of ARPSM. Indeed, they use the model themselves in deriving their ULS rate proposals. Rather, the CLECs challenge only some of the particular inputs, assumptions and weightings applied in ARPSM. AT&T/WorldCom Joint Ex. P-1.0 (Ankum) at 43-44. As will be shown, these challenges are without merit. Before addressing the points on which the parties differ, however, a complete understanding of the current contractual structure under which Ameritech purchases switching is essential. Ameritech will discuss this structure over the next few pages, and then turn to the primary areas of disagreement between the parties.

A. Ameritech Illinois' Current Switching Contracts and the ARPSM Model.

Ameritech currently buys switching equipment and services in two formats: (1) it buys new digital switches to completely replace existing, 1-A analog switches, and (2) it buys individual lines of digital switching to add to existing (or newly placed) digital switches. As noted above, Ameritech no longer pays for switching equipment by paying a price associated with an individual, discrete component or piece of equipment. Instead, Ameritech pays a "per-line" or "per-port" rate for each line of switching contained in the switch. Ameritech Illinois currently buys its switching equipment and services from three vendors: Lucent, Nortel and Siemens. Ameritech Illinois has two contracts with each vendor; one contract deals with the replacement of the 1-A analog switches with new digital switches, and the second contract deals with the addition of digital lines to existing or newly placed digital switches.

The first type of contract is known as a 1-A Analog Switch Replacement contract. These contracts identify *specific* analog switches in *specific* Ameritech wire centers that may be replaced pursuant to the contract. The process of replacing the analog switch with the digital switch is known as "cutting over." Because Ameritech Illinois pays for the replacement digital switch based on the number of lines it can serve, the individual lines of switching provided by the new digital switch are known as "replacement" or "cut-over" lines.

Under the second type of contract, Ameritech buys additional digital lines to be added to newly-placed or existing digital switches. These contracts are known as Partners in Provisioning ("PIP") contracts. Ameritech buys these additional lines to accommodate increases in the number of lines each switch needs to serve – *i.e.*, to "grow" the switch – and, thus, these lines are known as "growth" lines.

The final critical fact to recognize is that the per-line price Ameritech Illinois pays for switching differs depending on whether the line purchased is a replacement line or a growth line. Replacement lines are priced as low as [redacted] per-line under the

switch replacement contracts, while growth lines are priced much higher under the PIP contracts. However, under either contract, the per-line price does not vary with the number of lines purchased, nor with the year of purchase. Am. Ill. Ex. 2.0 (Palmer) Sch. WCP-6 at 1.

Why have this two-tiered pricing structure? And why do vendors price replacement lines so much lower than growth lines? Clearly, the difference in price is not due to a difference in the actual cost of each line, as shown by the fact that [redacted] prices its replacement lines at [redacted], which is obviously below the cost of installing a new digital switch. Am. Ill. Ex. 2.1 (Palmer) at 17-18. Rather, the price differential is due solely to the fact that the switch vendors are competing with one another for Ameritech's business. The vendors compete aggressively on the price of replacement switches, driving down the per-line replacement prices, frequently to levels well below their cost. They do this because, as both Ameritech and the vendors know, once Ameritech buys a replacement switch for a given wire center, Ameritech is forced to go back to that same vendor when it wants to buy growth lines. (Each vendor will provide growth lines only for its own switches.) Am. Ill. Ex. 2.1 (Palmer) at 18. Once Ameritech is "locked in" in this fashion, the vendor will be able to charge higher prices for growth lines on the switch, and these prices will be set high enough so that the vendor recoups both the cost of the growth lines *and* the costs of the previously-placed replacement switch.

The individual per-line prices for replacement and growth lines do not align with the actual costs of these lines to the vendor (the price for replacement lines is below cost and the price for growth lines is above cost), but the vendor sets the prices so that the total revenues from the growth and replacement lines sales, taken together, recover the costs of providing the lines. Am. Ill. Ex. 2.1 (Palmer) at 18-19. Each vendor can do this because each vendor knows, to a fair degree of certainty, what the total revenues will be when it signs the switch replacement and PIP

contracts. The vendor knows precisely how many replacement lines it is obligated to provide – because the switch replacement contracts are expressly limited to specific, existing, 1-A analog switches, and because the number of lines served by each of those switches is a known, fixed number. Am. Ill. Ex. 2.1 (Palmer) at 18. And the switch vendor knows – from projections developed jointly with Ameritech – how many growth lines Ameritech can reasonably be expected to order from it. Thus, the vendor knows when it signs the contracts both the total revenues and average per-line price it will receive under its switch contracts. *Id*.

It must be emphasized that even though Ameritech Illinois pays different prices for switching depending on whether it is buying replacement lines or growth lines, the functionality of the lines purchased is the same – there is no difference between a replacement line and a growth line in terms of their capabilities. Therefore, even though there are separate prices for each kind of line, Ameritech Illinois in both cases is only really buying *a single* thing – namely, a functional line of switching. The price differences result only from the facts that switch vendors compete against each other and that Ameritech Illinois gets "locked in" to particular vendors at particular switches. In the absence of these competitive forces, the switch vendor would charge a single per-line price.

Ameritech Illinois was forced to design ARPSM to determine this single per-line price.[20] ARPSM melds the replacement line price and the growth line price from each of the two

[20] In previous cost studies, Ameritech Illinois used the Switching Cost Information System ("SCIS") to convert vendor pricing information into a format usable in TELRIC cost studies. Use of the SCIS was appropriate when Ameritech Illinois purchased switching by paying prices based on discrete, individual pieces of switching equipment. But SCIS is of no use where, as it now does, Ameritech Illinois buys switching on a per-line basis. Am. Ill. Ex. 2.0 (Palmer) at 8. Indeed, the Commission found in Docket Nos. 96-0486/96-0569 that SCIS did not accurately reflect the two-tiered contractual structure under which Ameritech Illinois currently purchases switching. *Second Interim Order* at 59. This is why Ameritech Illinois was forced to develop ARPSM. Dr. Ankum's insinuation (AT&T/WorldCom Joint Ex. P-1.0 (Ankum) at 26) that Ameritech Illinois developed ARPSM because it wanted to produce a new model that produced more favorable results is completely disingenuous, for Dr. Ankum himself recognizes that "[g]iven this bifurcated price structure and the fact that Ameritech [Illinois] purchases facilities from three different vendors, the question of 'what is the average unit price?' is important." *Id*. at 27. SCIS could not answer this question; ARPSM can.

contracts Ameritech has with each of its three vendors, and then melds the three resulting single per-line prices to produce a single, implicit, per-line price for all three vendors. This single price is the price that a hypothetical vendor would charge for all lines of switching, in the absence of competitive forces and the resulting two-tiered structure. Am. Ill. Ex. 2.1 (Palmer) at 9-10. In computing this price, ARPSM weights each of the two prices according to the respective numbers of replacement lines and growth lines that will be placed under the contracts.[21] The price computed by ARPSM is the appropriate price estimate to use in a TELRIC analysis because it is the best estimate of the average forward-looking market price switch vendors would charge Ameritech Illinois for any quantity of new lines. It is forward-looking because it is based on the prices in the contracts Ameritech currently has with its switch vendors, contracts that govern Ameritech Illinois' current and future switching purchases. Am. Ill. Ex. 2.1 (Palmer) at 9.[22]

B. Ameritech Illinois' ARPSM Line Weightings are Appropriate.

Now to the dispute. As noted above, the CLECs do not contest the underlying methodology of ARPSM. The only real dispute centers on how to count the number of replacement lines and growth lines used in ARPSM, and what the resulting weightings of the replacement line and growth line prices will be. As is clear from the two very different prices Ameritech Illinois pays for replacement lines and growth lines (*see* AT&T/WorldCom Joint Ex.

[21] Dr. Liu believes that the single price equivalent ("SPE") computed by ARPSM is not a valid substitute for a single market price because there can be many different combinations of replacement prices and growth prices that will still yield the vendor the same total revenue as the two prices reflected in the existing contracts. Staff. Ex. 7.0 (Liu) at 19-20. While Dr. Liu is correct in asserting that there are many different permutations within the two-tiered pricing structure that yield the same SPE, the vendors are indifferent to any of these permutations, as they will all yield the same SPE. Am. Ill. Ex. 2.2 (Palmer) at 35. The fact that the vendor agreed to one of these many permutations does not invalidate the fact that the SPE is the average price that the vendor expects for each line. *Id.*

[22] The CLECs appear to agree that it is appropriate to use the prices established in the current switch contracts. Their principal disagreement with Ameritech Illinois concerns the weightings that should be applied to the specific contract prices to calculate the average price to be applied in the cost study. AT&T/WorldCom Joint Ex. P-1.0 (Ankum) at 33-34.

P-1.0 (Ankum) at 32 (Table)), the proportion of replacement lines to growth lines has a tremendous impact on the average per-line price calculated by ARPSM. As one assumes a larger number of inexpensive replacement lines, the proportion becomes more heavily weighted in favor of replacement lines, and the average per-line price calculated by ARPSM falls as it becomes more heavily influenced by the lower replacement line price. It is for this reason that Dr. Ankum repeatedly attempts to inflate the number of replacement lines that should be input into ARPSM, and why he and the CLECs propose a weighting that is so heavily skewed in favor of the inexpensive replacement line price: [redacted] replacement and [redacted] growth. AT&T/WorldCom Ex. 1.0 (Ankum), Sch. AHA-2. Obviously, if one improperly inflates the number of inexpensive replacement lines, the average price will be artificially low, a result that favors individual CLECs, but one that disserves the public interest (because it would promote *inefficient* competition) and Ameritech Illinois (because it would not recover its true forward-looking costs).

In contrast, Ameritech Illinois' proposed weighting is [redacted]. This weighting is based on and derived from the number of replacement switches identified in the 1-A switch replacement contracts, and the projected number of growth lines to be added in the future under the PIP contracts. Ameritech Illinois assumes Ameritech will buy fewer replacement lines than growth lines (and the replacement line price therefore receives a lesser weighting) for one simple reason: there are simply fewer replacement lines than growth lines to be placed under the contracts. This is because the potential number of replacement lines that may be placed on a forward-looking basis is expressly limited by the switch replacement contracts. Am. Ill. Ex. 2.1 (Palmer) at 9-10, 18-19. One needs only to look at these contracts to determine how many inexpensive replacement lines Ameritech will (and can) buy. Those contracts specifically identify a limited number of

particular analog switches in particular wire centers that may be replaced at the specified replacement price. *Id*. at 10, 18-19. Thus, the contracts expressly limit the number of inexpensive replacement lines the vendor will or can be forced to sell. However, growth lines are not so limited. They can be placed on any digital switch in Ameritech Illinois' entire network, and the number of growth lines placed is not limited by contract. *Id*. at 10, 18. Rather, growth line placement is limited only by customer demand, and as many growth lines as are necessary will be placed to accommodate future demand.[23]

The CLECs contend the average price calculated by ARPSM is too high because the balance is too heavily tilted toward the higher growth line price. But because they do not seriously challenge the number of growth lines projected in ARPSM, the only way they can tilt the balance back toward the lower replacement line price is by artificially inflating the number of replacement lines examined in ARPSM. They try to do this by arguing that ARPSM is not a true TELRIC model and that it fails to count all of the lines in Ameritech's network – and specifically, that it vastly undercounts the number of inexpensive replacement lines. AT&T/WorldCom Ex. P-1.0 (Ankum) at 37. But they cannot argue that ARPSM undercounts the number of replacement lines to be placed on a forward-looking basis under the current contracts, since that number is fixed by contract, and the number that is fixed by contract is the number ARPSM uses. Therefore, the CLECs must resort to the specious argument that ARPSM should also consider all of the lines *already placed* in Ameritech's network. Dr. Ankum contends that ARPSM fails to account for roughly 9.8 million lines already placed on Ameritech's existing base of switches. *Id*. at 36-37. He makes the unsupported assertion that all of these lines were installed at "very low per line prices" (*id*. at 35) and argues that once these

[23] Significantly, the CLECs and Staff appear to have no disagreement with Ameritech's growth line projections. In fact, they apparently agree with Ameritech as to both the total number of growth lines and the timing of their placement.

lines are accounted for, the ratio of replacement to growth lines is [redacted] replacement and [redacted] growth. Dr. Ankum attempts to justify this radical proposal by arguing that ARPSM, as a TELRIC model, must assume that all the lines already in service at the time the contracts were signed and not subject to the contracts' prices were installed at the lower replacement line prices.

Notably, Dr. Ankum *does not* claim that ARPSM incorrectly reflects the number of replacement lines that will or can be installed *under the existing contracts*. Rather, he simply believes that ARPSM should artificially inflate the number of replacement lines by improperly importing into the analysis the multitude of lines that *already have been placed across the entire base of Ameritech's switches under old switching contracts that no longer exist, and under prices that are nowhere reflected in the record of this proceeding.* AT&T/WorldCom Ex. P-1.0 (Ankum) at 42-44. As Staff witness Dr. Liu explained, Dr. Ankum improperly "produce[s] a line-mix that is substantially biased toward the replacement lines." Staff Ex. 7.0 (Liu) at 51. Dr. Ankum's methodology should be rejected because: (1) it wholly ignores the existing contracts under which Ameritech buys switching on a forward-looking basis, and (2) it grossly misunderstands ARPSM's role in a TELRIC analysis.

First, Dr. Ankum's proposal runs directly counter to pricing structure and vendor commitments set forth in Ameritech's current switching contracts. Dr. Ankum contends that a proper estimate of the forward-looking price of switching must include lines placed in the past at allegedly lower prices under different contracts. But this makes no sense. There is simply no reason to assume that switch vendors would sell switches today at an average price heavily weighted by historic volumes provided under previous contracts at what allegedly were "very low prices." Am. Ill. Ex. 2.1 (Palmer) at 10. As Mr. Palmer explained, such an assumption runs

directly counter to the basic microeconomic maxim that an efficient firm prices its goods based on current, not past, information about costs and market demand. *Id*. at 13-14.

As described above, the current contracts are based on a particular set of assumptions. Both the vendors and Ameritech assume that Ameritech will buy a specific number of replacement lines (based on the specific analog switches at specific wire centers identified in the contracts as switches to be replaced) and a specific number of growth lines (based on the annual switch growth rate). Thus, the vendor can predict with relative certainty the number of lines it will have to provide at the low replacement price and the number of lines it will be able to sell Ameritech at the higher growth price. With this knowledge, the vendor can calibrate the lower replacement line prices and higher growth line prices accordingly to obtain the average per-line price and total revenue figures it wants and needs in order to cover its costs and earn a reasonable profit. Thus, the replacement line price is tied directly to the growth line price, and, more specifically, to the number of each kind of line the vendor will be obligated (in the case of replacement lines) and will be able (in the case of growth lines) to provide. And, as discussed above, the average per-line price that results is the forward-looking cost of switching – it is the price the vendor would charge for a line of switching today.

However, Dr. Ankum's proposal wreaks havoc with these carefully calibrated assumptions. He assumes the vendors would replace *all* of Ameritech's analog switches with new digital switches at the same prices for which they have agreed to replace an expressly limited handful of analog switches (and thus a limited number of replacement lines). With all due respect, this makes no sense. Am. Ill. Ex. 2.1 (Palmer) at 18. The switch vendors based their low replacement line prices on the assumption that, as the contracts provided, they would only take a "hit" on roughly 2 million replacement lines by offering the low replacement line

price. But if, as Dr. Ankum asserts, the proper number of replacement lines is roughly 12 million, the vendors clearly would not have agreed to the current prices.

A simple example illustrates the point. Assume that a single line of switching costs $5, that a vendor knows it will only have to supply one replacement line, and that the vendor reasonably projects that it will be able to sell one growth line in the future. In this scenario, the vendor might provide the replacement line for $2 and the growth line for $8. It would take a $3 hit on the replacement line, but once Ameritech was "locked in" to that vendor's switch, the vendor would be able to charge $8 for the growth line and recoup the $3 lost on the replacement line. However, these prices would make no sense if the number of replacement lines was increased to 6. In that case, the vendor would take a hit of $18 (a hit of $3 per replacement line), while only recovering $3 when it sold the growth line. And in that case, the vendor would lose $15 (*i.e.*, it would recover less than 60% of its costs) unless it changed its prices – which it clearly would do. If the vendor had to sell 6 replacement lines and could only count on selling one growth line, it would either raise the replacement line price or raise the growth line price. The price Ameritech paid in the past under previous contracts and the portions of Ameritech's facilities that have already been placed under prior contracts is simply irrelevant to today's forward-looking price of switching. Am. Ill. Ex. 2.1 (Palmer) at 9-11. The vendors would not sell their switches today at an average price heavily weighted by historic volumes provided at lower prices. *Id*. at 13. Injecting other quantities into ARPSM, such as the number of lines and switches placed under old contracts, is contrary to basic microeconomic theory and grossly distorts this forward-looking price contemplated by the vendors and the carrier. *Id*. at 11-13.

Staff proposes a replacement/growth line weighting of [redacted]. Staff Ex. 7.0 (Liu) at 25. While this is not the exact same weighting as proposed by Dr. Ankum, it is apparent that Dr. Liu, like Dr. Ankum,

includes many more replacement lines in her analysis than does Ameritech Illinois. Specifically, she appears to include in her replacement line count "the total number of replacement lines [that existed] in 1996." Staff Ex. 7.0 (Liu) at 25. The number of replacement lines in 1996 obviously includes replacement lines that were placed prior to 1996 under the previous switch contracts. Thus, Dr. Liu includes many lines that were placed before Ameritech Illinois' current switching contracts went into effect. Ameritech Illinois Ex. 2.2 (Palmer) at 32-33. By including these additional lines in her analysis, Dr. Liu, like Dr. Ankum, assumes that the switch vendors would agree to provide substantially more replacement lines than the limited number expressly fixed by the vendor contracts, and would do so while keeping their prices constant. Ameritech Illinois has already shown why this assumption is improper and how it results in a dramatic understatement of Ameritech Illinois' forward-looking switching costs.

Second, Dr. Ankum's proposal to include the 9.8 million lines already placed fundamentally misunderstands ARPSM's purpose in TELRIC studies. As Staff witness Dr. Liu put it, "Dr. Ankum has failed to understand the role of ARPSM and the relationship between ARPSM and the subsequent TELRIC analysis." Staff Ex. 7.0 (Liu) at 50. As Mr. Palmer explained, ARPSM, strictly speaking, is not a TELRIC model – it does not compute the TELRIC of unbundled switching, and its output is not the same as the output of a TELRIC analysis. Am. Ill. Ex. 2.1 (Palmer) at 15; Am. Ill. Ex. 2.2 (Palmer) at 33-34. Rather, ARPSM is simply a tool to convert vendor pricing information into a format that is useful in TELRIC cost studies. Am. Ill. Ex. 2.1 (Palmer) at 14-15, 19. [24]

[24] Dr. Ankum accuses Ameritech Illinois of arguing "that it should not be required to perform a TELRIC study" (AT&T/WorldCom Ex. P-1.1 (Ankum) at 19) and chides it for "admit[ting] that ARPSM is not a TELRIC study." *Id*. at 17-18. In light of the foregoing discussion in the text, these contentions are at best disingenuous. Ameritech Illinois has been crystal clear from the outset: ARPSM is not a TELRIC model. That fact did not have to be extracted as any sort of "admission." And Ameritech has never argued that it should be relieved of performing a TELRIC study. Again, Ameritech has been quite clear from the outset; it uses the output of ARPSM in a TELRIC study that has produced the specific rate proposals that have been submitted in this proceeding.

FCC Rule 505(b) provides in relevant part that the TELRIC is the (1) forward-looking cost (2) over the total quantity of the facilities and functions. Thus, to determine the TELRIC for unbundled local switching, Ameritech Illinois' unbundled local switching cost study essentially entails two steps. *First*, it requires a calculation of the forward-looking cost of a single line of switching. *Second*, because the TELRIC analysis assumes Ameritech will build its entire switching network from scratch, this single, per-line price must be applied across all of Ameritech's switches.

ARPSM is designed only to take care of step one – it determines the forward-looking cost of a line of switching. It does this by looking at the current vendor contracts and the different switching prices they contain, and develops an average switching price – the price that a vendor would charge if it were only charging a single price per line of switching. Am. Ill. Ex. 2.1 (Palmer) at 19-20. Obviously, the price to buy a line of switching today is best determined by looking at contracts that exist today and that set prices for purchases occurring today. For the reasons discussed above, ARPSM does not count as replacement lines those lines that were placed in the past under different conditions and under different, now expired, contracts.

But this does not mean that those previously-placed lines never figure into the cost study. Ameritech Illinois did not omit from consideration millions of previously-placed lines, but simply assumed that these lines would be replaced at the average price of the lines that were considered in the development of the contracts, rather than the contractual replacement line price. Indeed, once ARPSM properly calculates the forward-looking price of a line of switching, other cost models, such as the Network Usage Cost Analysis Tool ("NUCAT"), take this price and apply it to the *whole* network – a network that includes *all* of Ameritech's previously-placed switches – consistent with the TELRIC principle that assumes Ameritech Illinois builds its entire network from scratch, employing only the best currently available technology and forward-

looking costs. Am. Ill. Ex. 2.1 (Palmer) at 16, 20; Am. Ill. Ex. 2.2 (Palmer) at 30.[25] It is only at this time that one may look at those switches that were replaced under previous contracts (which one necessarily does when assessing the whole of Ameritech's network). Application of the forward-looking price to the entire network is therefore a step that occurs outside ARPSM. Because the total investment required to replace the existing end-office switches equals the average price per line calculated by ARPSM multiplied by the total number of lines in the network, the TELRIC price equals the average price per line generated by ARPSM. Am. Ill. Ex. 2.1 (Palmer) at 15-16.

But Dr. Ankum muddles these two steps. He looks at switches that were already placed *as part of the first stage of the calculation*. For all the reasons discussed above, this badly distorts the forward-looking cost of switching by fundamentally thwarting the carefully-calibrated pricing structure agreed upon by Ameritech, and most importantly, its vendors. As Staff witness Dr. Liu recognized, "Ameritech has used appropriate inputs in its ARPSM analysis and ARPSM has accomplished what it is intended to do. Dr. Ankum is incorrect in criticizing Ameritech for the inputs used in ARPSM and incorrect in attempting to turn ARPSM into a TELRIC model by altering its inputs." Staff Ex. 7.0 (Liu) at 50. In fact, "[b]y proposing to alter the inputs to be used in ARPSM in order to turn ARPSM into a TELRIC model, Dr. Ankum demonstrates that he had failed to identify and thus failed to address the real key issues." Staff Ex. 7.0 (Liu) at 49.

Dr. Ankum's focus on the prices that were paid for switching facilities in the past is an embedded viewpoint that is inconsistent with forward-looking TELRIC principles. As Dr. Liu

[25] In this respect, ARPSM is no different than the SCIS model Ameritech Illinois used in the past. When Ameritech Illinois used to buy switching based on the prices of discrete pieces of equipment, Ameritech Illinois used the SCIS model to convert component-by-component vendor pricing data into a format that was usable in TELRIC studies. Like ARPSM, SCIS produced a price to be used as an input in Ameritech Illinois' cost models, but was not a cost model in and of itself.

explained, Dr. Ankum's claim is "irrelevant" from a forward-looking cost point of view and "unfounded" because "what prices Ameritech paid in the past have no bearing on [the] TELRIC of switching today or in the future." Staff Ex. 7.0 (Liu) at 52. But even if the historical prices of the previously-installed base of switches were relevant to calculating the forward-looking price per line, Dr. Ankum simply assumes without any evidence whatsoever that those lines were placed at the low replacement line price. Indeed, he has admitted that he has presented no evidence that the "millions of cutover lines" allegedly ignored by Ameritech Illinois were actually provided at "very low prices." Tr. 305-306 (Ankum). This is yet another reason that Dr. Ankum's distorting, results-oriented weighting construct must be rejected.

Third, the ARPSM methodology is fully consistent with Illinois' Cost of Service Rule (83 Ill. Admin. Code § 791). Two subsections of the rule are particularly relevant: 791.20(c) and 791.60(e). Rule 791.20(c) states in part that "[f]orward-looking costs ignore embedded or historical costs; rather, they are based on the least cost technology currently available whose cost can be reasonably estimated based on available data." Ameritech Illinois' methodology complies with 791.20(c) in each of these respects. First, ARPSM appropriately ignores embedded and historical costs, and instead calculates the forward-looking investment per line based exclusively on the prices contained in Ameritech Illinois' existing vendor contracts. Second, ARPSM generates only the investments associated with state-of-the-art digital switches, and utilizes a forward-looking mix of analog and digital lines as contained in the switch vendor contracts. Finally, ARPSM generates reasonable estimates of a forward-looking investment per line, based on the explicit quantities and prices contained in its vendor contracts. Am. Ill. Ex. 2.1 (Palmer) at 22.

The ULS study also complies with 791.60(e), which states in relevant part:

> Each cost study shall reflect input prices . . . that the carrier is *actually expected to face*. The carrier shall provide the underlying bases for projected changes in input

> price levels, using, wherever possible, projections based on *market expectations* and rates set in labor contracts. Where appropriate, costs shall be based on prevailing vendor prices or vendor prices under consideration that reflect volume discounts off listed input prices. These discounts shall be reflected in the cost study.

(Emphasis added). ARPSM models input prices for switching contained in the vendor contracts that Ameritech actually faces. ARPSM's weighted average calculations are based on the market expectations of both Ameritech and the switch vendors regarding quantity and timing of switch capacity purchases at the time the contracts were signed. ARPSM appropriately incorporates the lower prices charged by switch vendors for the explicitly enumerated replacement switches into its average investment per line calculation. In sum, ARPSM generates input prices that are fully compliant with the Illinois Cost of Service Rule. Am. Ill. Ex. 2.1 (Palmer) at 22.

In contrast, Dr. Ankum's recommendations do not comply with the Rule. As described, Dr. Ankum asserts that past prices and inquiries into whether lines placed under previous contracts are replacement or growth lines are relevant to a forward-looking cost study. But this driving by looking in the rearview mirror clearly does not comply with Rule 791.20(c). Moreover, his recommendation that existing lines be included in ARPSM's analysis of the current vendor contracts also runs contrary to Rule 791.60(e). The results proposed by his weighting methods in no way resemble input prices that Ameritech is likely to face, and his inclusion of existing lines in producing a weighted average pretends that the switch vendors would provision Ameritech's switching needs at an average price far lower than that anticipated by the parties when they signed the contracts. Finally, Dr. Ankum's broad application of the low replacement line price is clearly an inappropriate treatment of vendor discounts.

C. Ameritech Illinois' Line-Side Fill Factor Is Appropriate.

ARPSM applies a fill factor of [redacted] to digital growth lines. Am. Ill. Ex. 2.1 (Palmer) at 28. This fill factor was approved by the Commission in

Docket Nos. 96-0486/0569, and Dr. Liu agrees that its use is appropriate. Staff Ex. 7.0 (Liu) at 55. This fill factor reflects the fact that Ameritech purchases digital growth lines on a DS1 basis, and must convert the price it pays for the DS1 into a price-per-working or revenue-producing DS0. Am. Ill. Ex. 2.1 (Palmer) at 28. Based on Ameritech's experience, approximately [redacted] of the 24 DS0 channels contained in each DS1 are required for testing, maintenance, and administration, thus yielding the [redacted] fill factor. *Id*. This fill factor applies only to DS1s that have been purchased and paid for by Ameritech. It does not capture the additional DS1s that may physically exist on the switch but which have not been paid for or activated. *Id*. at 29. Moreover, as Dr. Liu recognized, the fill factor is used only to account for the fact that only a portion of the 24 DS0 channels within the DS1 are for working lines, and that the rest are used for maintenance, testing, and administration; it does not account for spare facilities that are intended for future growth. Staff Ex. 7.0 (Liu) at 55. The DS1 fill factor is the only fill adjustment made in ARPSM; no other fill adjustments were made or required because all other fill factors were implicit in the contract prices. Am. Ill. Ex. 2.1 (Palmer) at 46-47.

III. AMERITECH ILLINOIS' SHARED TRANSPORT RATE IS PROPER.

The primary determinant of shared transport costs (that is, the transport part of ULS-ST) is the cost of trunk ports on the switch. Not surprisingly, then, those trunk port costs have been the primary point of contention in this proceeding. Before addressing this issue, however, it is important to clarify exactly where the parties stand on their proposed rates. Ameritech Illinois' proposed shared transport rate is [redacted] per MOU. Am Ill. Ex. 2.1 (Palmer), Sch. WCP-6R. The CLECs originally proposed [redacted] AT&T/WorldCom Ex. P-1.1 (Ankum) at 16. However, Staff witness Dr. Liu identified a significant problem in Dr. Ankum's and the CLECs' trunk port investment.

Dr. Ankum's computations, even using his incorrect assumptions regarding the appropriate weighting between cutover, or replacement, port prices and growth port prices, seriously understated trunk port costs. Specifically, he initially understated the single trunk price for each of the three vendors – he understated the Lucent price by [redacted] the Nortel price by [redacted] and the Siemens price by [redacted] Staff Ex. 7.0 (Liu) at 45-47. After being made aware of these errors, Dr. Ankum agreed to correct his calculations. The corrections caused his proposed rate to more than double to [redacted] AT&T/WorldCom Ex. P-1.1 (Ankum) at 15-16.

At this point, the primary difference between the proposed rates lies in how Ameritech Illinois' trunk port costs are calculated. Trunk ports, like line ports, are priced on a per-port basis under the switch vendor contracts. And, like line ports, trunk ports can be either replacement or growth. Therefore, in addition to using ARPSM to calculate its forward-looking line port switch investments, Ameritech Illinois used ARPSM to calculate its forward-looking trunk port investments. Just as it calculated the implicit, single price per line that a vendor would charge for a line of switching in the absence of a bifurcated pricing structure for line ports, ARPSM also calculates the implicit, single price per trunk port.

Ameritech Illinois calculated the replacement and growth trunk port counts and weightings in the same manner as it did in the line port context. That is, it based the weighted trunk port price on the mix of replacement and growth trunks reflected in the switch vendor contracts. Am. Ill. Ex. 2.1 (Palmer) at 44. Ameritech Illinois then calculated its forward-looking trunk costs by taking the single average price per trunk port calculated by ARPSM and multiplying it by the number of trunk ports it anticipates it will need to add over the life of the current contracts. Ameritech Illinois and the CLECs agree that the most accurate determinant of

what this number will be is the amount of interoffice usage that is anticipated, and not the amount of growth lines that will be added in the future. *Id*., AT&T/WorldCom Ex. P-1.0 (Ankum) at 52. This interoffice usage figure is the same interoffice usage figure used to calculate transport termination costs. It should also be noted that Ameritech will buy additional trunk ports on a forward-looking basis only when it buys growth lines. When growth lines are added, additional trunk ports must also be added to the switch so that enough trunk ports exist to handle the increased traffic resulting from the added growth lines. However, Ameritech does not buy additional trunk ports when it buys replacement lines. The replacement switches already come with enough trunk ports to accommodate the traffic on the replacement switch, so additional replacement trunk ports are not needed on a forward-looking basis.

In attacking Ameritech Illinois' calculation of its forward-looking trunk port costs, and in trying to artificially depress the average trunk port price (and thereby decrease Ameritech Illinois' shared transport rates), Dr. Ankum and the CLECs are guilty of the same overweighting errors that they commit in the line port context. Namely, they artificially deflate the average per-trunk port price calculated by ARPSM by improperly inflating the number of replacement trunk ports input into ARPSM. And they do this by (again) including in their replacement trunk port count those replacement trunk ports that were previously placed under prior contracts at different prices. This self-serving attempt to achieve below-cost UNE rates should be rejected for all the reasons discussed above in Section II.B.

It does bear mentioning that there is an important difference between the line port and trunk port contexts as far as ARPSM is concerned. Under Ameritech's switch contracts, growth trunk ports are separately priced from growth lines. Thus, the contracts contain a price for growth lines that can be used in the ULS rate determination, and a price for growth trunk ports that can be used in the ST determination. However, replacement trunk ports are not separately

priced from replacement lines. Rather, the cost of replacement trunk ports is included in the replacement line prices. Therefore, for each vendor, the replacement trunk port price in ARPSM is [redacted] Am. Ill. Ex. 2.1 (Palmer) at 48. Accordingly, to arrive at an appropriate weighted average price for all trunk ports, Ameritech Illinois multiplies the number of anticipated growth trunk ports by the blended trunk port growth price (*i.e.*, the single growth price that results from melding the three PIP contracts), and divides this figure by the sum of the number of replacement ports fixed by the switch vendor replacement contracts and the number of anticipated growth ports. The result is the single, implicit, per-trunk port price. This methodology is correct for the same reasons the method of calculating the implicit per-line price is correct.

Staff has expressed concern that because the replacement line prices include the replacement trunk port investment as well as the line port investment, the replacement line price used in ARPSM is artificially inflated and the resulting single average price per line computed by ARPSM is inflated. Staff Ex. 3.0 (Liu) at 8-9. Staff also asserts that because there is no separate replacement trunk port investment included in the trunk port calculations, the single average price per trunk port calculated by ARPSM is lower than it should be. *Id.* While Ameritech's methodology may, in theory, introduce a slight upward bias in line investment and a slight downward bias in trunk investment, it results in no double-counting of costs and is consistent with the information provided in the switch vendor contracts. Am. Ill. Ex. 2.1 (Palmer) at 48. Since one vendor prices replacement lines and trunks at $0 per line/trunk, identifying a portion of that $0 as trunk-related is an impossible exercise. As an alternative, the ARPSM model first determines how many growth trunks will be installed under the contracts at the contractual growth prices and then divides the result by all trunk ports, replacement as well as growth, that will be provided under the contracts. In effect, this methodology assigns a zero

trunk cost to replacement trunks. Given the constraints and structure of the contracts, this is a reasonable methodology. *Id*. Moreover, the CLECs have not taken issue with it at all. And except for expressing the concerns noted above, Staff has not suggested any alternative.

ULS-ST Reciprocal Compensation Rate. This issue regarding the ULS-ST reciprocal compensation MOU rate is one of parity and fairness. Specifically, the question is whether, when a CLEC uses ULS-ST to terminate a call that originates from an Ameritech Illinois customer, the CLEC should be entitled to charge Illinois the full reciprocal compensation rate (as the CLECs propose), or whether, as both Ameritech Illinois and Staff propose, the CLEC should charge Ameritech Illinois the same rate for usage of the switch that the CLEC would pay to Ameritech Illinois when the CLEC customer originates a call through ULS-ST.[26]

Ameritech Illinois' proposal, which Staff appears to support, is very simple: because the Ameritech Illinois switch performs the exact same functions when it is used to originate a call for a CLEC customer served via ULS-ST as it performs when it terminates a call from an Ameritech Illinois customer to the CLEC's customer over ULS-ST, the same charge should apply in each circumstance. Thus, while Ameritech Illinois proposes to charge CLECs a certain MOU rate for usage of the switch when with ULS-ST, it also proposes to pay the CLEC that exact same rate (for the exact same function) when the CLEC terminates an Ameritech call via ULS-ST. It's a straightforward matter of symmetry and fairness.

The CLECs, however, oppose such symmetry and fairness. To begin with, they oppose any charge for usage of the switch with ULS-ST. That would mean that CLECs would use the switch for free when originating their customers' calls, but would be able to charge Ameritech Illinois the full reciprocal compensation rate when the switch performs the exact same functions

[26] The differing proposed rates are set out in the table in the Executive Summary of this brief and in Schedule WCP-3S, attached to Mr. Palmer's surrebuttal testimony. The difference between the rates proposed by Ameritech Illinois and Staff results from methodological disagreements (such as the proper factor for joint and common costs) discussed elsewhere in this brief.

to terminate the call. Such "heads I win, tails you lose" pricing is clearly improper. And even if the CLECs do have to pay for use of the switch with ULS-ST, as Ameritech Illinois and Staff propose, the CLECs still would seek to pay only the low MOU rate to Ameritech Illinois as part of ULS-ST, but again charge the full reciprocal compensation rate when the switch performs the exact same function to terminate an Ameritech Illinois call. That proposal suffers from the same obvious flaws.

Accordingly, the ULS-ST rate should include a component for the ULS-ST reciprocal compensation rate per MOU. Any other result would be manifestly unfair.

SS7 Signaling and Tandem Switching Rates. The CLECs and Ameritech Illinois propose the same ULS-ST rates for SS7 signaling [redacted] and for tandem switching [redacted]. Ameritech Illinois Ex. 2.2 (Palmer) Sch. WCP-3S. Staff proposes lower rates for each of these UNEs (*i.e.*, [redacted] for SS7 signaling and [redacted] for tandem switching). However, Staff's rates are different only because they apply *their* proposed joint and common cost loading factor to each cost. Thus, aside from a disagreement as to which joint and common cost loading factor should be applied, Staff agrees (along with the CLECs) that Ameritech Illinois properly calculated its SS7 and tandem switching costs. And it can be assumed that if the Commission adopts Ameritech Illinois' proposed joint and common factor, Staff would have no quibble with the resulting SS7 signaling and tandem switching rates.

Common Transport Rate. As to the per-MOU common transport rate, Ameritech Illinois proposes [redacted], the CLECs' propose [redacted], and Staff proposes [redacted]. Am. Ill. Ex. 2.2 (Palmer) Sch. WCP-3S. The difference between Ameritech Illinois' rate and the CLECs' rate results from the disagreement (discussed above) as to the weightings that should be

used in ARPSM to calculate trunk port investments. The difference between Ameritech Illinois' rate and Staff's rate results both from a disagreement as to the ARPSM weightings (also discussed above) and also from Staff's use of its joint and common cost loading factor, which, for the reasons discussed below in Section V, is improper.

IV. CUSTOM ROUTING OF OS/DA VIA AIN.

Ameritech Illinois has submitted a nonrecurring cost study for the custom routing of OS and DA with ULS-ST via an advanced intelligent network ("AIN"). The nonrecurring cost for this service consists of a [redacted] routing cost and a development cost of [redacted] for custom routing per CLEC per switch. Ameritech Illinois calculated the development cost by determining that [redacted] of the [redacted] for the development costs of AIN service logic for ULS-ST should be allocated to the OS/DA function. Ameritech Illinois then took this [redacted] and divided it by the total service demand of [redacted] units – three CLECs times [redacted] switches in Illinois, Michigan and Ohio (the only central offices where there exists some potential demand for OS/DA custom routing), times two (for OS and DA). No party has challenged the [redacted] routing charge,[27] and only Staff's Ms. Buckley challenges the development charge of [redacted] However, none of Ms. Buckley's objections withstands scrutiny.

First, Ms. Buckley asserts that certain of the building blocks of the development charges are "subjective," and based on subject matter expert ("SME") estimates that are purportedly

[27] The [redacted] consists of a connection cost of [redacted] and a disconnection cost of [redacted]. Staff's Ms. Buckley agrees that both components are reasonable and appropriate in amount. Proprietary Staff Ex. 8.0 (Buckley) at 8. She contends, however, that the disconnection cost should not be recovered in the up-front nonrecurring charge, but rather should be recovered from the CLEC in the future when disconnection actually occurs. *Id.* at 11. We deal in the text below with this contention.

unreliable, unreasonable or unverifiable. From this she concludes that the development cost for service logic be adjusted downward from [redacted] to [redacted] Proprietary Staff Ex. 8.0 (Buckley) at 10-11. However, the SME who provided the estimates has over 20 years' experience with Ameritech Illinois, the past seven of which have been spent in her current capacity relating to AIN services. Am. Ill. Ex. 2.2 (Palmer) at 49. The SME is therefore very familiar with the AIN service development process. She is also familiar with and knowledgeable about the use of AIN to provide custom routing for OS/DA. *Id.*

Ms. Buckley justifies her recommended reduction of the development cost for service logic from [redacted] to [redacted] solely on the ground that "[i]t is not unusual, in [her] opinion, for cost estimates to be off by as much as ten percent." Proprietary Staff Ex. 8.0 (Buckley) at 11. She offers no support for this assertion. Nor does she attempt to support the application of this general observation to the development costs for AIN service logic. Moreover, Ms. Buckley admits that if estimates are off by as much as ten percent, they could just as easily be off on the high side as on the low side (Tr. at 215) – meaning that Ms. Buckley's logic leads to the conclusion that the *real* development cost could just as easily be [redacted] as [redacted]

Accordingly, the rational thing to do – even assuming that Ms. Buckley's opinion were correct – would be to adopt the middle ground, which is Ameritech Illinois' [redacted]

Second, Ms. Buckley recommends that the adjusted development cost be allocated among all existing switches in the five Ameritech states. Proprietary Staff Ex. 8.0 (Buckley) at 11-12. This recommendation improperly spreads the development costs across many switches for which

there is no potential demand for the service – and never will be. The development cost is developed by dividing the total regional development cost by the total regional demand. Am. Ill. Ex. 2.2 (Palmer) at 52. Only those switches where there is a reasonable prospect that demand will develop should be included in the regional demand. And that is what Ameritech has done. *Id.* Ms. Buckley does not contend that there is demand for the service in any of the other switches she recommends including in the divisor. Nor does she claim that Ameritech Illinois failed to include in its number any switch where demand is likely to materialize. She apparently wants simply to include all of the switches whether there is any reasonable prospect of demand or not. Ms. Buckley's recommendation, if accepted, would ensure that Ameritech won't recover its development cost. A simple example demonstrates how and why this is so. Assume company X has 500 customers, but that only 100 have need for its new product A. Assume development costs of $500 for A. If X wants to recover this $500 in the purchase price of A, it will divide by 100 (the actual demand), which yields $5 per each unit of A. Ms. Buckley's recommendation would force X to divide by 500, which would yield $1 per unit of A. Since only 100 units of A will be sold, her recommendation would force X to forego recovery of $400 of its development cost. This result is both unreasonable and unlawful. Accordingly, Staff's second development cost recommendation should be rejected as well.

In addition, as noted above, Ms. Buckley contends that Ameritech Illinois should not include the custom routing disconnection fee in the nonrecurring charge because disconnection is a future event with an unknown date of occurrence and therefore should not be applied at the time service is connected. Proprietary Staff Ex. 8.0 (Buckley) at 11. Her objection is solely to the timing of recovery; she readily concedes that the cost is real and that Ameritech's number is accurate. Ameritech Illinois' inclusion of the disconnect charge in the up-front non-recurring charge – a practice that Ameritech Illinois has long followed in its cost studies – is entirely

appropriate. First, it is reasonable to assume that a customer will cancel a service at some point in the future. Am. Ill. Ex. 2.2 (Palmer) at 48. Second, if one waits to collect the fee until disconnection occurs, there is a significant risk that Ameritech Illinois simply won't be paid – because, for example, the CLEC is unable or unwilling to do so. *Id*. at 49.

Finally, Ms. Buckley understates the rate for custom routing of OS and DA via AIN because she applies Staff witness Marshall's recommended shared and common cost markup of [redacted] instead of the [redacted] approved by the Commission in Docket Nos. 96-0486/96-0569. Ms. Marshall's markup is improper for the reasons discussed below in Section V.

V. STAFF'S PROPOSAL REGARDING JOINT AND COMMON COSTS IS FLAWED AND SHOULD BE REJECTED.

Alone of all the parties to this proceeding, Staff attempts to inject the issue of joint and common costs into this case.[28] Specifically, Staff asks the Commission to revisit the determination it made in Docket Nos. 96-0486/0569 (the TELRIC case) and to establish an "interim" joint and common cost markup that is different from (and substantially lower than) the factor that results from the Commission's Order in the TELRIC case, and that would apply (apparently) only to ULS, ULS-ST and the nonrecurring charge for AIN-based custom routing of OS and DA. The Commission should reject this request.

The appropriate joint and common cost markup was fully litigated and adjudicated in the TELRIC case, on a complete record to which numerous parties contributed both evidence and

[28] The CLECs implicitly acknowledged that joint and common costs are not at issue here by declining to address such costs at all in their direct testimony. On rebuttal, Dr. Ankum on behalf of WorldCom makes a casual suggestion that the Commission should adopt for ULS and ULS-ST the joint and common cost markup approved in Texas for SWBT. AT&T/World Com Joint Ex. P-1.1 (Ankum Rebuttal) at 57. But he offers no analysis or support demonstrating that that would be an appropriate number in Illinois for Ameritech Illinois. In any event, importation of the Texas number would be wholly improper. There is no evidence in the record that Southwestern Bell Telephone Company's joint and common costs are in any way comparable to Ameritech Illinois' costs, nor could the Commission legally assume comparability. *Atchison, T. & S.F. Ry. Co. v. Commerce Comm'n*, 335 Ill. 624, 641 (1929); *Moline Consumers Co. v. Commerce Comm'n*, 309 Ill. 412, 419-20 (1933).

legal and policy arguments. In that case, the Commission carefully analyzed the proofs and the arguments and issued an order requiring Ameritech Illinois to make a number of adjustments and revisions to its joint and common cost numbers. TELRIC Order at 35-54. Ameritech made all of these required adjustments and revisions, and has applied the resulting markup to all of its UNEs and to all of its interconnection and collocation services. Ameritech Illinois' compliance with the Commission's order in the TELRIC case has been tested in the TELRIC Compliance proceeding (Docket No. 98-0396), again on a complete record to which all parties contributed. In that case, Staff took the position that "Ameritech has complied with the Commission's Order regarding adjustments to joint and common cost pools." *See* Staff Initial Br., Docket No. 98-0396, at 4 (filed December 15, 2000). The Hearing Examiner agreed, finding that "Ameritech Illinois has adequately complied with the Commission's directives with respect to reductions, reallocations, and revisions to joint and common costs." Hearing Examiner's Proposed Order, Docket No. 98-0396, at 47 (June 7, 2001).

If the Commission is to revisit Ameritech Illinois' joint and common costs, it should do so in a new proceeding, on a full record to which all parties contribute, and in a considered and deliberate manner – not as an afterthought at the behest of a single party in a proceeding devoted to other matters, and on the basis of an exceedingly sparse (some would say wholly nonexistent) record.

Further, even if the Commission were to accept Staff's invitation to revisit Ameritech Illinois' joint and common costs, the Commission should reject Staff's "interim" markup. The process by which that "interim" markup was derived is fundamentally, and, by Staff's own admission, fatally flawed.

First, Staff's starting point is not even a study or a model. Instead, it is a *preliminary draft* of a study that was revised substantially before it was finalized and filed with the

Commission.[29] So the starting point is clearly wrong. And what Staff has done with that inappropriate starting point is equally wrong.

Staff adjusted the preliminary draft downward, purportedly to reflect merger savings resulting from the SBC/Ameritech merger. To do this, Staff first took the initial estimate of savings that would be realized over a several-year period and plugged those savings into the draft on an *undiscounted* basis.[30] Tr. 372-73. To avoid overstating the dollar value of these savings, these multi-year savings should have been discounted to present value. The use of undiscounted numbers is Staff's first error. That decision will be made in other proceedings. *See* Am. Ill. Ex. 2.2 (Palmer) at 63.

Second, Staff multiplied this undiscounted stream of savings by 1.8, allegedly to reflect the results of an audit that purportedly determined that the merger savings would actually be 80% greater than originally anticipated. Tr. 389. The audit process in question, however, has not been completed, and the Commission has yet to determine what adjustments, *if any*, should be made to the original estimate of savings. That decision will be made in other proceedings. *See* Am. Ill. Ex. 2.2 (Palmer) at 63. This is Staff's second error.

Third, if these significant flaws weren't enough, Staff in cross-examination delivered the *coup de grace* to its own proposal. Staff witness Marshall admitted that although the merger produced both capital and expense savings, Staff's adjustment took into account *only* the expense savings. Tr. 390-91. This is important for the following reason: The joint and common cost markup is a fraction. Shrinking the numerator and leaving the denominator constant makes the

[29] As the Commission is aware, in the SBC/Ameritech merger docket (Docket No. 98-0555), Ameritech Illinois was ordered to file revised cost studies for all of its UNEs and for joint and common costs. Ameritech Illinois made the required filings on April 6, 2000. Two months earlier, Ameritech Illinois provided Staff with a preliminary draft of its new joint and common cost study, which was then revised substantially before the final product was submitted to the Commission on April 6, 2000. Inexplicably, Staff uses the preliminary draft, and not the final study, as the starting point of its analysis. Tr. 369 (Marshall).

[30] The final joint and common cost study that was submitted to the Commission on April 6, 2000 did in fact take into account merger savings – as Staff now concedes. Tr. 395 (Marshall).

fraction smaller, and thus makes the joint and common cost markup smaller as well. On the other hand, shrinking the denominator and leaving the numerator constant will make the fraction – and the joint and common cost markup – larger. Taking expense savings into account shrinks the numerator and makes the fraction, and thus the markup, smaller. Tr. 391-92. And that is precisely what Staff did – *and that's all that Staff did*. Tr. 390-91. Had Staff also taken into account *capital* savings, as it should have, the denominator would have shrunk; and this would have made the fraction, and the markup, larger. Tr. 391-92. How much larger, we don't know – because Staff did not do what it, by its own admission, should have done.

Accordingly, even setting aside and ignoring the other flaws discussed above, this self-acknowledged flaw makes it clear that, under no circumstances, could the Commission accept and adopt Staff's "interim" markup. By Staff's own admission, it is simply too low (Tr. 390-92) and is inconsistent with the markup that Staff has elsewhere conceded is fully consistent with the TELRIC Order.

VI. BOTH CONTROLLING LAW AND SOUND POLICY PROHIBIT ANY REQUIREMENT THAT CLECS BE ALLOWED TO USE SHARED TRANSPORT TO PROVIDE INTRALATA TOLL SERVICE.

One of the issues that the Commission listed for consideration in this docket is whether CLECs should be able to use the shared transport UNE to route their intraLATA toll traffic. Initiating Order at 3. Ameritech Illinois is willing to (and does) let CLECs use the shared transport UNE to carry intraLATA toll traffic from a ULS port to the Feature Group D trunk port of the end-user's presubscribed intraLATA toll carrier. Am. Ill. Ex. 1.0 (Hampton) at 15. The real disagreement here is whether Ameritech Illinois must also carry the *toll portion* of a CLEC customer's intraLATA toll call as part of shared transport; that is, should shared transport be used to carry a CLEC customer's toll call from the customer to the chosen toll carrier (as it is today), or all the way from end to end? There is no legal requirement that Ameritech Illinois

allow end-to-end transmission of toll calls over the shared transport UNE. The FCC has never required it; it violates the definition of shared transport; and use of shared transport for toll service cannot meet the "impair" test required for imposing new unbundling requirements because, among other things, the intraLATA toll market is already fully competitive. Am. Ill. Ex. 1.1 (Hampton) at 7-8. Furthermore, imposing such an unbundling requirement in the intraLATA toll market would be bad policy, as there is no need to extend unbundling requirements to that market and doing so would create a disincentive to facilities-based competition.[31]

A. The FCC Has Not Required ILECs to Allow CLECs to Use Shared Transport for Toll Traffic.

In deciding that shared transport had to be provided as a UNE, the FCC focused on the use of shared transport to provide competitive local service (*i.e.*, local exchange or exchange access). The FCC found that the statutory standards had been met to require unbundling of shared transport for CLECs to use in providing *local* service. "[R]equiring incumbent LECs to provide unbundled access to shared transport is consistent with the Act's goal of encouraging requesting carriers to rapidly enter the *local* market." *UNE Remand Order*, ¶ 379 (emphasis added); *id.*, ¶ 375 (discussing what requesting carriers need "in the early stages of entering the *local* market") and ¶ 378 (assessing the needs of "the new entrant entering the *local* market") (emphasis added); *Third Reconsideration Order*, ¶ 35 (unbundling shared transport because it is "important for stimulating entry into the *local exchange market*") (emphasis added). The FCC also focused exclusively on the local market and local service when requiring the unbundling of

[31] Ameritech Illinois would allow CLECs to use shared transport for intraLATA toll service if they sign the Illinois Section 271 Interconnection Agreement Amendment, or I2A, which Ameritech Illinois proposes to offer in hopes of gaining Section 271 interLATA authority. Ameritech Illinois also would offer shared transport for intraLATA toll under its compliance tariff for Section 13-801 of the Illinois PUA, but that tariff was filed under protest and is subject to withdrawal based on court or agency decisions.

local circuit switching, which is a required part of shared transport. *UNE Remand Order*, ¶¶ 253, 272-73, 275, 281; 47 C.F.R. 51.319(c).

Because of its focus on local exchange competition, the FCC never considered whether ULS-ST also has to be provided for use in providing intraLATA toll service. As a result, there is no federal requirement that the shared transport UNE be available for a CLEC to provide intraLATA toll service. The FCC has been very clear that "section 251(d)(2) does not compel us, once we determine that any network element meets the 'impair' standard for one market [such as shared transport for the local market], to grant competitors automatic access to that same network element solely or primarily for use in a different market [such as shared transport for the intraLATA toll market]." *Supplemental Order Clarification*, ¶ 15 (rejecting argument of AT&T).

In the *Supplemental Order Clarification*, the FCC was explaining why its impair analysis for some UNEs for local service did not automatically translate into a finding of impairment if those same UNEs would be used for exchange access service. *Id*. The same analysis applies when the CLECs try to extend the unbundling requirement for shared transport in the local exchange market to the intraLATA toll market. As the FCC stated, where the markets for services are "legally distinct" – as local exchange service and intraLATA toll service undeniably are – the agency "must gather evidence on the development of the marketplace for [the service at issue] . . . before [it] can determine the extent to which denial of access to network elements would impair a carrier's ability to provide [that service]." *Id*., ¶¶ 14, 16. It is well recognized that toll service represents a separate market from local exchange service. Indeed, Congress itself drew an explicit statutory distinction between these two markets. *See* 47 U.S.C. 3(47) and 3(48) (separately defining "telephone exchange service" and "telephone toll service").

IntraLATA toll service has been declared competitive in Illinois since April 7, 1996[32] and there are many competing. Thus, the FCC's shared transport rule does not require that shared transport be made available for CLECs to use for routing intraLATA toll traffic.

A requirement to allow use of shared transport for intraLATA toll service also would violate the FCC's definition of shared transport itself. The FCC has made clear that shared transport, by definition, includes use of the ILEC's *existing* routing tables in the local switch. *Third Reconsideration Order*, ¶¶ 36-37 (shared transport "*requires* a requesting carrier to utilize the routing tables contained in the incumbent LEC's switch") (emphasis added). Consistent with the 2-PIC requirements of Illinois law, Ameritech Illinois' routing tables are programmed to route intraLATA toll calls to the connection point with the end-user's selected intraLATA toll carrier. Am. Ill. Ex. 1.1 (Hampton) at 7. To instead route an end-user's toll calls over the shared transport network – even when the end-user has chosen a toll carrier other than Ameritech Illinois – would require changes to those routing tables. *Id*. at 10. Specifically, whereas Ameritech Illinois' routing tables today use a Carrier Identification Code, or "CIC," for each toll carrier to determine how to route intraLATA toll traffic, the CLECs propose to force Ameritech Illinois to modify those routing tables to allow CLECs to use the same CIC as Ameritech Illinois. Am. Ill. Ex. 1.1 (Hampton) at 9-10. In other words, the CLECs are demanding shared transport with *customized* routing. *Id*.

By definition, of course, the shared transport UNE does *not* include customized routing, but rather uses the ILEC's existing routing tables. The FCC has recognized that "customized routing [is] *different from the incumbent LEC's existing routing arrangements*." *Third Reconsideration Order*, ¶ 45 (emphasis added). Indeed, that is the essence of shared transport; by using the ILEC's *existing* routing tables, the CLEC gets efficient use of the functionality of

[32] Order, Ill. C.C. Docket No. 97-0157 (June 25, 1997).

Ameritech Illinois' interoffice transport network to compete in the local services market. The CLECs now want Ameritech Illinois to offer customized shared transport that still provides that same full functionality and use of the existing routing tables, *except* for that subset of customers that use the CLEC for intraLATA toll service, who would have to have a subset of their calls (the intraLATA toll calls) routed differently. Am. Ill. Ex. 1.0 (Hampton) at 17-18; Am. Ill. Ex. 1.1 (Hampton) at 9-11. The CLECs cannot have it both ways: they cannot have shared transport, which "requires" use of the existing routing tables, yet simultaneously demand that the ILEC create a customized shared transport routing arrangement for every CLEC that also provides toll service. The existing routing tables do exactly what they are supposed to do in a 2-PIC world.[33]

B. The Impairment Test Cannot Be Met with Respect to Shared Transport and the Routing of IntraLATA Toll Traffic.

Because there is no existing federal requirement, the only conceivable way that a requirement to provide shared transport for intraLATA toll service could be imposed would be if a state commission conducted an independent impairment analysis under Section 251(d)(2) of the 1996 Act and FCC Rule 317 (47 C.F.R. 51.317) to determine whether CLECs would actually be impaired *in providing intraLATA toll service* if they could not use unbundled shared transport. *See Supplemental Order Clarification*, ¶ 15 (impairment analysis must focus on the specific service the CLEC seeks to provide). CLECs bear the burden of proving impairment in any Rule

[33] In addition to violating the FCC's definition of shared transport, the CLECs' request would cause many practical problems. IntraLATA toll calls today are routed to the selected toll carrier by means of a Carrier Identification Code, or "CIC." Am. Ill. Ex. 1.1 (Hampton) at 9-10. Every toll carrier has its own CIC. *Ibid*. What the CLECs now want is for Ameritech Illinois to modify its routing tables again – it already modified them once to move to 2-PIC (*id.* at 8*)* – to allow any and all CLECs that lease the shared transport UNE to use the same CIC as Ameritech Illinois. That would cause at least two significant practical problems. *First*, allowing CLECs to use the shared transport UNE for intraLATA toll service could cause capacity overload on Ameritech Illinois' interoffice transport facilities. Those facilities are sized to serve a certain expected load. CLECs, however, could easily divert toll traffic that today is carried on dedicated trunks and separate facilities to the shared transport facilities, resulting in a much higher demand on those facilities than expected. This could lead to premature exhaust of those facilities and additional costs for Ameritech Illinois to install new facilities to handle the increased traffic. Am. Ill. Ex. 5.0 (Kirksey) at 9-10. *Second*, the CLECs' request would lead to a proliferation of CICs, which would increase routing complexity. Am. Ill. Ex. 1.1 (Hampton) at 10-11.

317 analysis, as they are the ones seeking a change from the status quo and imposition of new regulatory requirements. The CLECs have not even attempted to meet that burden here, nor could they meet it if they tried.

A showing of impairment requires proof of a material adverse impact on a CLEC's ability to provide the services it seeks to provide. 47 C.F.R. 51.317(b)(1); *UNE Remand Order*, ¶ 51. There is no such impact here. As noted above, the intraLATA toll market in Illinois is very competitive today. Am. Ill. Ex. 1.2 (Silver) at 4. CLECs obviously are having no difficulty obtaining the inputs necessary to compete in that market. The existence of current competition and ready access to the necessary inputs is strong evidence of a lack of impairment. *UNE Remand Order*, ¶ 66 ("[W]e find the marketplace to be the most persuasive evidence of the actual availability of alternatives [to a proposed unbundling requirement] as a practical, economic, and operational matter."); *id*. at ¶ 281 (limiting unbundling duty for local circuit switching based on actual, current marketplace evidence and ability of CLECs to secure necessary inputs to provide competitive service), ¶¶ 314-17 (same for packet switching), ¶ 441 (same for OS/DA). The FCC has explained that any impairment analysis must "look to actual developments in the telecommunications marketplace before imposing additional unbundling obligations on incumbent LECs." *Supplemental Order Clarification*, ¶ 16. The FCC's analysis of circuit switching, packet switching, and OS/DA demonstrates that unbundling requirements are completely inappropriate in an area that is already competitive and has many providers.

There also could be no finding of impairment because allowing use of shared transport for routing of intraLATA toll traffic would unfairly force Ameritech Illinois to subsidize its competitors in that market.

First, if a CLEC or multiple CLECs were to use the same CIC as Ameritech Illinois, which would be necessary to meet the CLECs' request here, Ameritech Illinois' billing systems

would have no way to determine who should pay the access charges for terminating the call. Am. Ill. Ex. 1.1 (Hampton) at 12. The CIC is what the billing systems use to determine which carrier pays terminating access charges on an intraLATA toll call. *Id*. If AT&T, WorldCom, and Ameritech Illinois all used the same CIC and the call terminates to, say, a Sprint end-user, Sprint would bill Ameritech Illinois for terminating access even though the call came from an AT&T or WorldCom customer and AT&T or WorldCom should be paying the access charges. *Id*. at 12-13. Neither Ameritech Illinois nor Sprint would have any way of determining whose customer made the call, either, so Ameritech Illinois could be left holding the bag for substantial terminating access charges that it should never have to pay. This problem, and the unwarranted costs it shifts to Ameritech Illinois, would multiply rapidly as more and more intraLATA toll-providing CLECs all used the same CIC as Ameritech Illinois. *Id*. at 13.

The CLECs offer no solution to this problem because they obviously don't want one – what better way to increase market share in an already-competitive market than to force a primary competitor to pay your access charges? Indeed, it is plain that the CLECs' primary desire is to use the shared transport UNE for intraLATA toll service in order to avoid access charges. Am. Ill. Ex. 1.2 (Silver) at 5. Here the CLECs would get a double-dip by not only avoiding terminating access charges but also by foisting those charges on Ameritech Illinois.

Second, when Ameritech Illinois provides an end-user with both local exchange and intraLATA toll service, it must impute access charges into its toll rates. Am. Ill. Ex. 1.2 (Silver) at 4; 220 ILCS 5/13-505.1. That inflates Ameritech Illinois' toll rates by allegedly leveling the playing field between Ameritech Illinois and competitive intraLATA toll providers. *See* 220 ILCS 5/13-505.1. Under the CLECs' proposal here, however, Ameritech Illinois would continue imputing access charges into its toll rates, but CLECs using the shared transport UNE to provide intraLATA toll service would both avoid access charges *and* have no duty to impute such

charges into their rates. This again would give CLECs a substantial, but unearned and unnecessary, cost advantage in the intraLATA toll market, which is competitive today without any such special treatment of competing providers. Am. Ill. Ex. 1.2 (Silver) at 4.

Third, allowing CLECs to use shared transport to provide intraLATA toll service would create a disincentive to facilities investment in that market, even though facilities-based competition is the most meaningful type of competition. *E.g.*, *UNE Remand Order*, ¶ 7. Unbundling requirements inevitably deter investment in facilities, which would be a backward step in the already-competitive intraLATA toll market. Am. Ill. Ex. 5.1 (Kirksey) at 3. Such requirements also devalue past facilities investments by other competitors in the market.

C. The CLECs' Arguments for Redefining and Expanding the Shared Transport Obligation Are Baseless.

As noted above, the CLECs do not even attempt to prove they are impaired in the intraLATA toll market by a lack of unbundled access to shared transport for use in that market. Rather, they argue either that the inability to use shared transport for the end-to-end carriage of their customers' intraLATA toll calls is discriminatory or that this use of shared transport is required by the Illinois and FCC SBC/Ameritech merger decisions.[34] Neither argument holds up on inspection.

The discrimination claim fails because Ameritech Illinois treats CLECs exactly like it treats its retail customers or like it would treat its affiliate. When an Ameritech Illinois retail local exchange customer makes an intraLATA toll call, Ameritech Illinois transports the call to the connection point to that end-user's selected intraLATA toll carrier, just as it would do for any CLEC's or affiliate's end-user customer that made an intraLATA toll call. Am. Ill. Ex. 1.0 (Hampton) at 15; Am. Ill. Ex. 1.1 (Hampton) at 7. That is exactly how presubscription to

[34] Order, Ill. C.C. Dkt. No. 98-0555 (1999) ("Illinois Merger Order"); Memorandum Opinion and Order, CC Docket 98-141 (rel. Oct. 8, 1999) ("FCC Merger Order").

intraLATA toll carriers is supposed to work, as end-users have complete freedom to pick the toll carrier they desire. If Ameritech Illinois is the end-user's selected toll carrier, the toll portion of the call is carried over Ameritech Illinois' network like any other toll call and then terminated to either another carrier or to the called party. It cannot be discriminatory to treat CLECs exactly like Ameritech Illinois treats its own retail customers.

The CLECs rely heavily on paragraph 56 of the FCC's SBC/Ameritech merger conditions for their claim that transport can be used for intraLATA toll service. Specifically, they contend that SBC permitted competing carriers to use shared transport to route intraLATA toll traffic in Texas as of August 27, 1999, and therefore that Ameritech Illinois is required to make the same offering. This argument is based on an *interim* order by the Texas PUC regarding two CLECs (Sage and Birch) that was in effect as of August 27, 1999. The facts and common sense do not support the CLECs' argument.

It is important to understand the history behind the Sage/Birch interim order in Texas. Prior to the implementation of intraLATA toll dialing parity (also referred to as 2-PIC)[35], which allowed end-users to presubscribe to a chosen intraLATA toll carrier, SBC's ILEC in Texas, SWBT, allowed CLECs to use unbundled shared transport in providing toll service. On April 6, 1999, however, SWBT issued an Accessible Letter explaining to telecommunications carriers that in light of the implementation of intraLATA toll dialing parity (2-PIC), they would no longer be able to use unbundled shared transport in that way after June 7, 1999, but rather would need to indicate a CIC so that their toll customers' calls could be routed to the selected carrier for completion. Am. Ill. Ex. 1.2 (Silver) at 7; Tr. 142. Two small CLECs, Sage and Birch, were unable to make the necessary adjustments to be ready for that change when 2-PIC took effect, and thus asked the Texas PUC to allow them to keep using unbundled shared transport for toll

[35] *See* 83 Ill. Adm. Code 773.10 (defining "2-PIC").

service. Am. Ill. Ex. 1.2 (Silver) at 7; Tr. 140. The Texas PUC issued an interim order allowing Sage and Birch to do so on an interim basis, pending a more complete review of the issue. Am. Ill. Ex. 1.2 (Silver) at 7.[36] That *interim* order, which applied to Sage and Birch only, was in place as of August 27, 1999. However, in light of the previous Accessible Letter and the fact that other CLECs had made the necessary adjustments for 2-PIC, the ability to use unbundled shared transport for intraLATA toll service was *not* something that SWBT "offered" to CLECs as of August 27, 1999. Indeed, any CLEC that asked for such an ability would have been denied. *Id*. At that time there was no final Texas PUC order requiring SWBT to allow CLECs to use the shared transport UNE for toll service and the legality of any such requirement was still being litigated. Sage and Birch were simply being accommodated by the interim order while they were supposed to be trying to catch up with the rest of the CLECs who were able to convert to the 2-PIC system. *See id*.[37]

Thus, SWBT did not "offer" the use of the shared transport UNE for intraLATA toll service to CLECs as of August 27, 1999 and cannot be compelled to import to Illinois the interim capability that it provided to two CLECs as of that date because those two CLECs could not keep up with the rest of the industry's move to 2-PIC.

* * *

In sum, the CLECs' request to use shared transport for the routing of intraLATA toll traffic has no legal support, as the FCC has never required that use of shared transport; conflicts with the FCC's definition of shared transport, which does not include customized routing; and is not supported by any of the CLECs' arguments, all of which mask the CLECs' real goal here,

[36] Order Issuing Interim Ruling Pending Dispute Resolution, Docket Nos. 20745 and 20755 (Pub. Util. Comm'n of Texas, Apr. 26, 1999).

[37] Staff has also argued that the Texas 271 Agreement, or T2A, allowed CLECs to use shared transport for intraLATA toll service as of August 27, 1999, but in fact the T2A did not become final until October 13, 1999. Am. Ill. Ex. 1.2 (Silver) at 6.

which is to gain an unearned advantage in the competitive intraLATA toll market by avoiding access charges. Granting the CLECs' request also would inhibit competition in the intraLATA toll market and deter investment in facilities in that market, all to the detriment of consumers. Accordingly, the Commission should reject the CLECs' request and approve Ameritech Illinois' ULS-ST tariff as it is.

VII. BOTH CONTROLLING LAW AND SOUND POLICY PROHIBIT ANY REQUIREMENT THAT AMERITECH ILLINOIS CREATE NEW UNE COMBINATIONS FOR CLECS TO PROVIDE NEW AND ADDITIONAL LINES.

The third issue specifically identified for investigation in this docket is whether Ameritech Illinois should have to combine UNEs for CLECs to provide an end-user with a new or second line. Initiating Order at 3. Parties have submitted extensive testimony on the policy aspects of this issue, but the question is largely legal. Federal law is clear that, under the plain meaning of the 1996 Act, incumbent LECs cannot be required to combine UNEs for CLECs. Rather, CLECs must combine UNEs for themselves. This is true regardless of whether the UNEs are those that the ILEC "ordinarily" would combine for its own customers, as the CLECs simply use "ordinarily" combined as a euphemism for "not already combined." And as the Supreme Court has stated, federal law – the 1996 Act – is controlling in the areas it addresses, as in those areas the federal government "unquestionably" has taken legal authority away from the states. *IUB II*, 525 U.S. at 378 n.6. Thus, the only relevant legal question is whether the UNEs in question are actually combined at the time of the CLEC's order; if they are, the ILEC cannot separate them, but if they are not, the CLEC alone must do any work necessary to combine them. Nothing in state law or sound policy authorizes any deviation from this controlling federal law. Accordingly, the CLECs' request, which would require this Commission to violate controlling federal law and assert authority that exceeds even the more extensive powers that Congress granted to the FCC, should be rejected.

A. Federal Law Prohibits Any Requirement That ILECs Combine UNEs for CLECs.

When implementing Section 251(c)(3) of the 1996 Act, the FCC originally issued two key rules on UNE combinations. Rule 315*(b)* (47 C.F.R. 51.315(b)) specified that ILECs could not separate UNEs that were already combined with one another at the time of the CLEC's order, unless the CLEC requested otherwise. Rule 315*(c)*, in turn, required ILECs to affirmatively combine for CLECs any UNEs that were not already combined at the time of the CLEC's order. In other words, Rule 315(b) dealt with existing combinations, while Rule 315(c) dealt with new combinations. On direct appeal, the Eighth Circuit struck down both rules. It vacated Rule 315(c)'s requirement to create new combinations because it "cannot be squared with the terms of subsection 251(c)(3)," which "can[not] be read to levy a duty on the incumbent LECs to do the actual combining of elements." *IUB I*, 120 F.3d at 813. The Eighth Circuit vacated Rule 315(b)'s requirement not to separate UNEs for a different reason, finding that it "would permit the new entrant to access the incumbent LEC's network elements on a bundled rather than an unbundled basis." *Id*. CLECs appealed the ruling on Rule 315(b), but not Rule 315(c), to the Supreme Court. The Supreme Court reversed the Eighth Circuit on Rule 315(b), holding that Section 251(c)(3) is ambiguous on whether already combined-network elements "may or must be separated" and that the FCC's rule prohibiting separation was rational. *IUB II*, 525 U.S. at 395.

On remand to the Eighth Circuit, the FCC and CLECs revived their arguments in support of the combining requirement in Rule 315(c), arguing that *IUB II* now supported that rule. The Eighth Circuit, however, again held that any requirement that ILECs combine UNEs for CLECs would violate the plain language of the Act: "Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carrier who shall 'combine such elements.' It is not the duty of the ILECs." *IUB III*, 219 F.3d at 759. Thus, the FCC's rule imposing such a duty on ILECs "violate[d] the plain language of the statute." *Id*.

Although this aspect of the Eighth Circuit's ruling is currently being reviewed by the Supreme Court, the Eighth Circuit's decision is today the binding law of the land. It is beyond dispute that the plain language of the 1996 Act binds state commissions when they address matters covered by the 1996 Act, just as it binds the FCC. *See* 47 U.S.C. 261(c), 251(d)(3). The single federal court with power to review the FCC's unbundling rules has held that the plain language of the 1996 Act prohibits the FCC from requiring ILECs to combine UNEs for CLECs. *A fortiori*, then, that same language prohibits any state commission from requiring ILECs to combine UNEs for CLECs: If the plain language of the 1996 Act prohibits the FCC from acting in a certain way, the states are equally powerless.

Any other interpretation of the law would be preempted, as it would allow state commissions to usurp the authority of the federal courts and the FCC and take actions that conflict with the plain language of 1996 Act. It also would lead to chaos, with every state commission reinterpreting the Act for itself, and thus would conflict with the structure of the Act. The 1996 Act has a definite federalized structure: the FCC establishes rules and the FCC and the states (where authority has been delegated) apply them. *IUB II*, 525 U.S. at 377-78 and n.6; *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 341, 344 (7th Cir. 2000) (under the 1996 Act, state commissions act as "deputized federal regulator[s]" that exercise a "federal regulatory function delegated to them by the federal government"). The CLECs' proposal, which is that states can do whatever they want *regardless of* what the Act says, *regardless of* the limits the Act places on the FCC, and *regardless of* what the courts have held with respect to the FCC's interpretation of the Act[38], would completely undermine the Act's federalized design and intent and thus be preempted under the Supremacy Clause of the U.S.

[38] It is worth noting that the FCC's interpretation of the 1996 Act is, as a matter of law, entitled to more deference than the interpretation of any state commission. *GTE South, Inc. v. Morrison*, 199 F.3d 733, 745 (4th Cir. 1999). Thus, if even the FCC cannot interpret the 1996 Act broadly enough to include a requirement that ILECs combine UNEs for CLECs, then obviously no state commission is free to adopt such an interpretation.

Constitution and established Supreme Court doctrine. *See*, *e.g.*; *Geier*, 120 S. Ct. at 1921, 1927-28; *Crosby*, 530 U.S. at 363. As the Supreme Court explained, any interpretation of the 1996 Act that leaves every state commission free to devise its own interpretations would be unprecedented and "surpassing strange." *IUB II*, 525 U.S. at 378 n.6.

Given these facts, CLECs must concede that the vacated FCC Rule 315(c) cannot support their position. Undaunted, however, they argue that FCC Rule 315(b) somehow supplies federal authority for imposing a combining duty on ILECs. That theory has already been rejected by the Eighth Circuit, the FCC, and the CLECs' own admissions to the Supreme Court.

First, AT&T and WorldCom claim that Rule 315(b) requires incumbent LECs to combine network elements that are "ordinarily combined" in the incumbent's network.[39] In fact, however, Rule 315(b) has nothing whatsoever to do with who should combine network elements, whether they would "ordinarily" be combined or not. The FCC itself declared in the *UNE Remand Order* (¶ 480) that it does "no[t] interpret Rule 315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined.'" The FCC's interpretation of its own rule "must be given controlling weight." *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994); *see* Brief for the Petitioners Federal Communications Commission and the United States, Nos. 00-511, *et al*., at 33 (U.S. Supreme Court, filed April 2001) ("Rule 315(b) applies to *existing* network element combinations.") (FCC's emphasis); AT&T/MCI Init. Br. in Docket 98-0396, p. 10 (conceding that FCC interpretation of its own rule is the "definitive[] constru[ction]"). The CLECs' attempt to ignore the FCC's interpretation of its own rule must therefore be rejected.

[39] AT&T and MCI focus their argument on UNEs that they claim Ameritech Illinois "ordinarily" combines for itself. But as a legal matter it is irrelevant whether the combinations they refer to are created "ordinarily" or not. The legal issue, as the Eighth Circuit and other courts have recognized, is who should be required to combine UNEs, any UNEs, that are not already combined. The Eighth Circuit held that under the plain language of Section 251(c)(3) that obligation falls on CLECs alone.

Similarly, the FCC, AT&T, and WorldCom all told the U.S Supreme Court that Rule 315(b) deals *only* with whether an ILEC can separate UNEs that are *already* combined. The FCC told the Supreme Court that Rule 315(b) applies only to "precombined elements" and merely prevents incumbent LECs from "disconnect[ing] previously connected network elements."[40] AT&T was even more emphatic, telling the Supreme Court that "*Rule 315(b) . . . did not remotely 'levy a duty' on LECs 'to do the actual combining of elements.'* To the contrary, Rule 51.315(b) applied *only to elements that are already combined*."[41] Furthermore, the FCC made clear that the validity of Rule 315(b)'s no-separation requirement was a matter "quite apart from [the] *separate issue* [under Rules 315(c)-(f)]. . . [of] *whether an incumbent must itself combine previously uncombined elements* before making them available to new entrants." LEXIS, 1997 U.S. Briefs 826 at *24 n.17 (emphasis added). The Supreme Court relied on these representations about the scope of Rule 315(b) in reinstating it, citing the FCC's brief and stating that Rule 315(b) applies *only* to "*already-combined* network elements." *IUB II*, 525 U.S. at 393 (emphasis added). Thus, the CLECs' new argument that Rule 315(b) can require ILECs to combine UNEs fails as a threshold matter because, as these very same CLECs have admitted, and as the FCC has said, Rule 315(b) "does not remotely" levy any such duty. The CLECs cannot be allowed to play both sides of the fence by proposing directly opposite, irreconcilable readings of Rule 315(b) depending on what forum they are in. Instead, they are bound by their statements to the Supreme Court on the proper reading of Rule 315(b), which flatly contradicts their self-serving (and illogical) reading here.

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[40] Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents, Nos. 97-826 *et al.*, at 23-26 (U.S. Supreme Court, filed June 1998), available on LEXIS at 1997 U.S. Briefs 826.

[41] Brief of Petitioners [AT&T and others] in Nos. 97-826 *et al.*, p. 44 (U.S. Supreme Court, filed April 3, 1998) (emphasis added), available on LEXIS at 1997 U.S. Briefs 826; *see also* Petitioner's [MCI] Brief on the Merits, p. 17, Nos. 97-826 *et al.* (U.S. Supreme Court, filed April 3, 1998) (describing Rule 315(b) as "a rule prohibiting incumbents from discriminatorily separating elements that are *already combined* in [the ILEC's] network") (emphasis added), available on LEXIS at 1997 U.S. Briefs 829.

Second, AT&T and WorldCom cite paragraph 296 of the *First Report and Order* as allegedly equating the term "currently combines" in Rule 315(b) with the term "ordinarily combines" from Rule 315(c). This is the exact same claim they raised at the Eighth Circuit, which rejected it. *IUB III*, 219 F.3d at 758-59. And if that were not enough, a careful review of the relevant section of the *First Report and Order* (¶¶ 292-97) reveals that only the first sentence of paragraph 293 discusses the subject matter of Rule 315(b), *i.e.*, the duty not to separate already-combined UNEs. The rest of those paragraphs, including paragraph 296, deal with who should combine elements that are not already combined, which was the subject matter of vacated Rules 315(c)-(f).

Third, the differing language of Rules 315(b) and (c) further confirms Ameritech Illinois' position.[42] The *only* mention in Rule 315 of elements that an ILEC "ordinarily combines" was in subsection (c). That subsection stated that an incumbent LEC had to combine UNEs for a CLEC "*in any manner, even if* those elements are not ordinarily combined in the incumbent LEC's network." (Emphasis added). By using the phrases "in any manner" and "even if," the FCC was making clear, because there was a dispute over the exact scope of any combining obligation, that subsection (c) required ILECs to combine UNEs regardless of whether they were ordinarily combined by the ILEC. In other words, subsection (c) encompassed both ordinary and non-ordinary new combinations. If the FCC had actually intended Rule 315*(b)* to require ILECs to combine UNEs that are "ordinarily combined," it obviously would have used the word "ordinarily" in subsection (b) – as it did in subsection (c) – rather than the word "currently."

The different terms used in subsection (b) and (c) thus reflected the FCC's different intents: UNEs either are already combined at the time of a CLEC's order or they aren't; if they

[42] Rule 315(b) states that "an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Rule 315(c) stated that "an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network."

are already (*i.e.*, currently) combined, subsection (b) bars ILECs from separating them; if they are not already combined (whether they would "ordinarily" be combined or not) subsection (c) was designed to require ILECs to combine them. The fact that the FCC chose to use different words in sequential subsections of the same rule proves that the word "ordinarily" from subsection (c) cannot be read into subsection (b) to replace the word "currently." *See Taracorp, Inc. v. NL Indus., Inc.*, 73 F.3d 738, 744 (7th Cir. 1996) ("the choice of substantially different words to address analogous issues signifies a different approach"); *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1092 (1st Dist. 1996) (" An elementary rule of construction is that when the legislature uses certain words in one instance and different words in another, it intends a different meaning.")

Fourth, AT&T's and WorldCom's argument would require the Commission to ignore the canons of statutory construction with respect to the 1996 Act itself. The first sentence of Section 251(c)(3) establishes the nondiscrimination requirement for UNEs. That is the sentence the Supreme Court relied on in upholding Rule 315(b)'s prohibition on separating elements that are already combined. *IUB II*, 525 U.S. at 395. The second sentence of Section 251(c)(3), the one the Eighth Circuit relied on in twice rejecting Rule 315(c), deals with the specific issue of *who* should combine elements that are *not* already combined, and assigns that duty exclusively to the CLECs. *IUB III*, 219 F.3d at 759. A basic rule of statutory construction is that the specific controls over the general, which in this case means that the specific provisions of the second sentence of Section 251(c)(3) control over the general nondiscrimination requirement of the first sentence. *See, e.g., HCSC-Laundry v. United States*, 450 U.S. 1, 53 (1981). Further, the second sentence of Section 251(c)(3) speaks of CLECs alone as doing the work to combine UNEs. Under the statutory construction doctrine of *expressio unius est exclusio alterius*, then, the statute

must be read as excluding any combining duty for ILECs. *See, e.g.*, *Payton v. Rush-Presbyterian-St. Luke's Medical Center*, 184 F.3d 623, 627 (7th Cir. 1999).

In sum, then, FCC Rule 315(b) cannot provide any basis for requiring Ameritech Illinois to combine UNEs for CLECs.

B. The Commission Has Not Previously Ordered Ameritech Illinois to Combine UNEs, and State Law Does Not Authorize Such a Requirement.

Faced with the lack of any federal law supporting their position, AT&T and WorldCom argue that the Commission previously required Ameritech Illinois to combine UNEs and provide a UNE Platform in response to LDDS's petition in Docket Nos. 95-0458/0531 (June 26, 1996) (the "*Wholesale Order*"). But the Commission already explicitly rejected that theory in GTE's TELRIC cost docket (Docket No. 96-0503). That case raised the question: "[D]id the Commission's decision on the LDDS petition in the Ameritech Wholesale docket include a requirement that the LEC provide combinations?" Order, Ill. C.C. Dkt. No. 96-0503, 1998 Ill. PUC LEXIS 390 at *19 (May 19, 1998). The Commission held that it did not:

> [W]ith respect to whether the LDDS petition decision in the Ameritech Wholesale docket required the LEC to provide combinations, a close reading of the Commission conclusion (See pp. 63-66 of 95-0458/95-0531) indicates *that this was a decision that required unbundling by the LEC and allowed rebundling by the competing carrier.* ***It did not require provision of LEC combinations*** priced upon the costs of the underlying network elements. *Therefore, not ordering GTE to provide such combinations is not inconsistent with our LDDS platform decision on the Ameritech Wholesale Docket. For these reasons we do not order GTE to provide combinations of network elements at unbundled network element prices pursuant to state law.*

Id. at *20 (emphasis added). This quote both defeats any claim that the *Wholesale Order* required Ameritech Illinois to combine UNEs for CLECs and raises an equal protection issue here: If GTE is not required to combine UNEs, Ameritech Illinois obviously cannot, consistent with equal protection, fair play, and non-arbitrary regulation, be required to do so.

The CLECs are likely to argue that a new provision in the Illinois PUA, Section 13-801(d)(3) authorizes a requirement to force Ameritech Illinois to combine UNEs for CLECs. Any such argument is erroneous. Section 801(a) of the new PUA provision requires the Commission to act in a manner consistent with federal law (which the Commission would have to do anyway (*Geier*, 120 S. Ct. at 1921, 1927-28)), and, as discussed above, federal law currently prohibits any requirement that ILECs combine UNEs for CLECs.[43]

C. Sound Policy Supports Ameritech Illinois.

Even if federal law did not preclude a UNE-combining requirement, imposing such a requirement would make for bad policy. Although various unbundling requirements under the 1996 Act have now been in place for five years, one must never lose sight of the fact that an unbundling obligation – that is, an affirmative obligation of one competitor to assist another by sharing its own facilities at cost-based prices – is an extraordinary obligation that is foreign to established antitrust and competition law. Am. Ill. Ex. 4.0 (Aron) at 5-6, 10. In light of that fact, regulators must be cautious in imposing such duties and must adhere scrupulously to the 1996 Act's requirements, which allow for unbundling requirements only where essential to competition. Indeed, the FCC's original failure to give enough weight to the limits the Act places on unbundling requirements led the Supreme Court to vacate the FCC's entire original slate of UNEs. *IUB II*, 525 U.S. at 389-91.

Furthermore, experience under the Act teaches that unbundling obligations – including an obligation on ILECs to combine UNEs for CLECs – can and do deter robust competition by creating a huge disincentive to CLECs to invest in and use their own facilities to provide competitive service. Dr. Aron explained this economic principle at length in her testimony. Am.

[43] Ameritech Illinois has filed a compliance tariff to implement section 13-801, but it did so under protest and subject to withdrawal based on decisions of courts or commissions, including this Commission. Ameritech Illinois also would combine UNEs for CLECs under the proposed I2A Section 271 contract amendment, as well as under certain conditions of the SBC/Ameritech merger orders.

Ill. Ex. 4.0 (Aron) at 3-19. Her views are not isolated. To the contrary, antitrust experts, judges, and leading industry analysts alike recognize the deleterious effect of expansive unbundling requirements, including a requirement that ILECs combine UNEs. *See IUB II*, 525 U.S. at 428-31. (Breyer, J., concurring in part and dissenting in part); P. Areeda & H. Hovenkamp, *Antitrust Law*, ¶ 773c at 209 (1996) (a competitor's "right to share [an incumbent party's facilities], particularly at judicially regulated prices, reduces or eliminates its incentive to enter by other means"); *id.*, ¶ 771b at 175; Prepared Statement of Mr. Scott Cleland, Managing Director of Legg Mason Precursor Group, Before the House Commerce Committee, Subcommittee on Telecommunications, Trade & Consumer Protection (Federal News Service, May 25, 2000) ("We strongly suspect that the success if the UNE-P resale will adversely affect the incentive for facility-based competition.") Indeed, carriers that have pursued facilities-based entry also recognize the anticompetitive effects of UNE-combining requirements, as they reduce the value of those CLECs' facilities. Am. Ill. Ex. 4.1 (Aron) at 12-13. The Commission should think long and hard before assuming that everything some CLECs ask for is procompetitive, as the long term – and lasting – effects of a UNE-combining requirement are much more likely to deter serious, meaningful competition than to advance it.[44]

VIII. MISCELLANEOUS MATTERS.

A. OS/DA Issues.

The shared transport UNE and the UNE-P including shared transport allow for customized routing of the leasing CLEC's OS and DA services to the platform of the CLEC's

[44] The Commission should not be misled by CLEC claims that there will be no UNE-P if Ameritech Illinois does not have to combine UNEs for them. The UNE-P for both new and existing lines will be available regardless of the outcome of this docket. The only question is who should combine the UNEs to create that platform. The evidence conclusively shows that the CLECs are well positioned to perform that function themselves, as they are already collocated in Ameritech Illinois central offices that give them access to nearly all of Ameritech Illinois' lines (and, of course, Ameritech Illinois also offers combination methods that do not require collocation). Am. Ill. Ex. 4.0 (Aron) at 17-19.

choice. Kirksey Rebuttal at 4-5 (AI Ex. 5.0). To that extent, the price of customized routing of OS/DA with ULS-ST is relevant to this proceeding, and Ameritech Illinois' Mr. Hampton submitted a tariff for such customized routing with his rebuttal testimony. Am. Ill. Ex. 1.1 (Hampton) Sch. JLH-3. The CLECs, however, have attempted to expand the scope of this proceeding beyond anything covered by the Initiating Order or the shared transport tariff under investigation, asking the Commission to classify OS and DA as UNEs. That issue is not properly part of this case – which concerns *only* the ULS-ST UNE – and should not be decided here. To the extent the Commission elects to consider it, however, the record clearly demonstrates that Ameritech Illinois provides customized routing for OS and DA and therefore, as a matter of law under the FCC's Rule 319(f) and the *UNE Remand Order*, cannot be required to provide OS or DA as UNEs or at UNE cost-based rates.

Ameritech Illinois is obligated to provide OS/DA as *services* on a nondiscriminatory basis, which it does, but could only be required to provide them as UNEs (and at TELRIC-based prices) in limited circumstances that do not exist here. Although the FCC originally defined OS and DA as UNEs in the *First Report and Order* (¶¶ 534-40), it removed them from the national list of UNEs in the *UNE Remand Order*, ¶¶ 441-42, 462-63; 47 C.F.R. § 51.319(f). The FCC found that there are multiple competing providers of OS/DA services and plentiful opportunities for CLECs to provide such services themselves or through a third party, and that these market conditions, coupled with the "additional nondiscrimination requirements of section 251(b)(3)," made it improper to continue treating OS and DA as UNEs. *UNE Remand Order*, ¶ 441.

Now, under FCC Rule 319(f), an incumbent LEC can be required to provide OS or DA as UNEs "*only* where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol." (Emphasis added). In this

context, the term "provide" means "make available,"[45] and Ameritech Illinois makes customized routing of OS/DA available through both tariffs and interconnection agreements. Am. Ill. Ex. 5.0 (Kirksey) at 4-5. By definition, this offering excuses Ameritech Illinois from having to offer OS/DA as UNEs, as the Public Service Commissions of Wisconsin and Ohio have already held.[46]

As the Ohio arbitration panel held:

> The Panel rejects AT&T's claim that a full test and demonstration of Ameritech's customized routing first needs to take place before its OS/DA is not considered a UNE. Nowhere in the *UNE Remand Order* does the FCC state that Ameritech's customized routing architecture must be fully tested and must first clearly demonstrate the product is equal to what Ameritech provides itself or otherwise OS/DA must be provided as a UNE.

The CLECs assert that Ameritech Illinois must prove, through testing, that it can provide OS/DA custom routing in the various manners demanded by each CLEC before it can cease providing them as UNEs. But that is not how the FCC's rule is set up. The rule is not designed to hold ILECs hostage to every CLEC's purported uncertainty about how custom routing will work before the ILEC can stop treating OS/DA as UNEs. Instead, the FCC flatly declared that OS and DA are *not* UNEs (*UNE Remand Order*, ¶ 441), then proceeded to create a limited exception in case any ILECs might choose not to provide custom routing or a compatible signaling protocol. The FCC rejected AT&T's argument that customized routing must be "deployed at all switches" and "tested and broadly deployed" before OS and DA could be removed from the list of required UNEs, recognizing the unworkability of such a standard. *UNE Remand Order*, ¶ 462 n.924. Once the ILEC makes customized routing or a compatible signaling protocol available, it is the CLEC's responsibility to attempt to prove that this

[45] *In the Matter of Application of Ameritech Michigan, Pursuant to Section 271*, CC Docket 97-137, ¶ 110 (rel. Aug. 19, 1997).

[46] Arbitration Award, Case No. 05-MA-120, at 47 (Pub Serv. Comm'n of Wisc. Oct 12, 2000); Arbitration Panel Report, Case No. U-00-1188-TP-ARB, at 21-22 (Mar. 19, 2000). The full Ohio Commission affirmed this decision in the final Arbitration Award dated June 21, 2001 (at 14).

exception applies, not the ILEC's responsibility to quell all alleged CLEC uncertainties. The CLECs have not met and cannot meet that burden there.

B. Transiting.

The CLECs argue that the shared transport UNE should include a transiting capability, *i.e.*, that shared transport should carry calls between two different CLECs' customers. The Initiating Order, however, does not list this as one of the issues for investigation in this docket, even though the CLECs asked that it be made an issue. *See* Initiating Order at 2-3. Because transiting arrangements are not part of the investigation here, the CLECs' arguments should be ignored or summarily rejected.

If the issue is nevertheless addressed, however, the fact is that Ameritech Illinois' shared transport product already includes a transiting capability. The only question is whether that capability should be a mandatory offering, as the CLECs request, or voluntary, as Ameritech Illinois argues. Am. Ill. Ex. 1.1 (Hampton) at 13-14.

The FCC's definition of shared transport precludes any mandatory transiting requirement. Transiting requires Ameritech Illinois to transport traffic to a switch owned by a third-party CLEC; that is, to a switch outside Ameritech Illinois' network. The FCC defines the shared transport UNE as "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, *in the incumbent LEC network*." 47 C.F.R. 51.319(d)(1)(iii) (emphasis added). Because a third-party CLEC's switch is not "in the incumbent LEC's network," transport to that switch is not part of the shared transport UNE defined by federal law. The FCC made this point explicitly in the *Third Reconsideration Order*. "We therefore clarify here that incumbent LECs must offer only *dedicated transport*, and *not* shared transport, between their switches or wire centers, and requesting carriers' switches." *Third Reconsideration Order*,

¶ 28. Thus, the law is clear that transiting is not a mandatory feature of the shared transport UNE.

The CLECs and Staff contend that transiting is already required for shared transport under either the 1996 Ameritech/MCI arbitration decision in Docket 96-AB-006 or the FCC Merger Order. The MCI arbitration decision, however, dealt only with transiting in the context of interconnection, not the shared transport UNE. The FCC Merger Order did include a transiting requirement (App. C, ¶ 55(a)) for *interim* shared transport, but contains no such requirement for long-term shared transport.

CONCLUSION

For the reasons stated herein, the Commission should (1) approve the rates proposed by Ameritech Illinois for ULS and ULS-ST and custom routing of OS/DA for ULS-ST, (2) reject the CLECs' proposal to extend the federal unbundling requirement for shared transport to the different, already competitive market for intraLATA toll service, and (3) reject the CLECs' proposal to violate federal law and the constitutional rules of preemption by forcing Ameritech Illinois to combine UNEs for CLECs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Tyson Covey, an attorney, hereby certify that I caused copies of Ameritech Illinois' Initial Brief on the parties on the attached service list by e-mail, messenger, overnight mail, or U.S. Mail, with all charges paid, this 30th day of August, 2001.

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J. Tyson Covey